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OKLAHOMA MUNICIPAL LEAGUE

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THE LEGAL ASPECT OF PUBLIC UTILITY REGULATION IN OKLAHOMA

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State regulation of public utilities through state commissions is a matter of the last three decades. In the early period of public utility development little regard was given the public welfare. Although the public utilities were monopolistic in character, the state maintained a policy of *laissez-faire* as a means of encouragement to the young and growing utility. Under this policy of non-interference the state granted valuable franchises, often times in perpetuity. Exemption from taxation, grants of land and bonuses were special privileges given by state and city as an inducement to the extension and construction of public service corporations. Few laws were enacted relative to public control and save a few provisions contained in their charters, the public service corporations in the performance of their public duty were only limited by their common law obligations, viz: (a) to charge only a reasonable rate, (b) to engage in no discrimination. The courts added judicial sanction to this policy of non-interference by holding in early decisions, as invalid any attempts at regulation through state commissions.(1). The right by the legislature to fix rates was even denied as not falling within the police power of the state.(2) The laws with regard to public utilities and common carriers were improperly administered. The courts recognized all sorts of excuses for the duty to serve. There was no standard for the determination of a reasonable rate, and in case of adequate service, the courts imposed no duty beyond the general principle as to negligence, while the duty not to discriminate was denied altogether.(3) The attempt by the courts of the country to enforce the common law duties of public service corporations utterly failed and as a result a reaction against judicial regulation set in. Under the burden of unjust discrimination, a vicious rebate system and extortionate rates, and aided by a more liberal attitude on the part of the courts beginning with that epoch making decision of Munn vs. Illinois(4) which held that the state of Illinois could regulate the charges of elevators situated at the gate-way of commerce, one state after

(1) Filley vs. Railroad, 5 Fed. Rep. 641; Railroad vs. Commission of Tennessee, 19 Fed. Rep. 679.
(2) 20 Fed. Rep. 273, 274.
(3) Beale and Wyman, Rate Regulation 2d Edition, Sec. 30.
(4) 94 U. S. 113.

another and finally the national government organized some sort of supervising power. In this direction Massachusetts took the lead in 1869 with the establishment of the Railway Commission. In 1884 twenty-one states had inaugurated some system of supervision and the national government followed in 1889 with the organization of the Interstate Commerce Commission. These early commissions had only supervisory and recommendatory powers.(1) The Massachusetts commission of 1869 which was typical of the early commissions was given the power to inspect physical and financial management of the railroad, inquire into accidents, hear complaints as to discrimination and make such recommendations for doing business as they deemed desirable. They depended upon the legislative action and public opinion to enforce their findings. The Interstate Commerce Commission at one time could only declare an existing rate to be unreasonable but could not go further and fix a reasonable rate.(2)

In Oklahoma during the territorial days, no commission existed for the regulation of rates and service of public service corporations. At various times Congress and the territorial legislature would enact legislation imposing upon common carriers certain requirements in the interest of the public welfare and a penalty for their violation. The laws of the territory provided that common carriers should be governed and regulated by the laws regulating common carriers which was simply a reiteration of their common law duty as to reasonable rates and adequate service(3), and in case of failure to perform on the part of the carrier or the imposition of an unreasonable rate or inadequate service, the individual thus injured could in a private suit against the carrier recover damages to the extent of his injury.(4) This remedy in the last analysis proved to be a very ineffective and empty one. During the days of the territory no attempt was made at a scientific regulation of rates. If a rate appeared unreasonably high, the only remedy was an appeal to the courts for an injunction to prevent the enforcement of the unreasonable rate(5), or the legislature could by law establish a rate. While the power of the legislature to establish a rate was unquestioned yet no adequate machinery existed by which the reasonableness of a rate or regulation of service could

(1) For the powers of the early commissions see State ex rel Ives vs. Railroad 47 Kan. 497; People of New York vs. Railroad, 114 N. Y. 58.
(2) Interstate Com. Com. vs. Railroad 167 U. S. 479. But in 1906 the powers of the Interstate Commerce Commission were enlarged to include rate making. U. S. Comp. St. 1909, p. 1158.
(3) Sec. 1036 Laws 1893.
(4) Sec. 1037 Laws 1893.
(5) Rock Island vs. Terr., 21 Okla. 329, 334. See Note 33 L. R. A. 183.

be accurately and scientifically determined. Owing to the variety of elements that enter into rate-making, the legislature was unable satisfactorily to handle the matter. An appeal to the courts was not a satisfactory solution of the question. When a case arose in which it became necessary to determine the reasonableness of a rate either to protect the public against unreasonable charge or to protect the public service corporation against rates so low as to amount to confiscation of property, the courts could enjoin the unreasonable rate. But here the power of the courts ceased as they did not possess the power to fix rates for the future, for the well-grounded reason that rate fixing is a legislative function and vesting the courts of the land with such duties is a violation of our system of division of powers.(1)

This under a system wholly unsatisfactory Oklahoma in common with other states of the Union provided commissions with mandatory power of rate making and regulation. The initiative in modern regulation was taken by Wisconsin in 1905, followed by New York and Oklahoma in 1907. These commissions have been given both as to equipment and rate-making such mandatory powers that administrative regulation has been substituted for legislative control. Vesting a commission with such vital functions as rate making and mandatory regulation was a revolution in the matter of the delegation of legislative authority, but in view of the stupendous growth of public service corporations, their wealth and influence, and their close connection with the public welfare, such a step was not only wise but highly necessary and expedient.

It is the purpose of this article to enumerate, in the following manner, the powers of the Corporation Commission as established by the Constitution of Oklahoma and subsequent legislation, and the interpretations placed thereon by the Supreme Court of the State:

(a) Organization of the Commission.

(b) The industries over which the Commission has jurisdiction.

(c) The extent to which that jurisdiction may be exercised.

The Corporation Commission of Oklahoma is a body created by the Constitution, consisting of three members elected by the people and serving for six years. Their tenure of office is so arranged that the term of one member expires every two years. In case of a vacancy the Governor appoints a member of the Commission to serve until the next general election, when the unexpired term is filled.(2) The Constitution places certain qualification upon the

(1) L. R. A. (ns) Note.
(2) Sec. 15, Art. IX, Const. of Okla.

members of the Commission, among them being: each must be a resident of the state two years before election, a qualified voter under the Constitution, and thirty years of age. A member of the Commission shall not directly or indirectly be interested in any public service utility over which the Commission has jurisdiction, and if he should voluntarily become so interested his office shall become vacant. Should he become interested other than voluntarily a reasonable time is given him to dispose of his interest or his office shall become vacant.(1) The Commission is organized by electing one of its own members Chairman and appointing a Secretary. A majority of the Commission shall constitute a quorum, and the concurrence of a majority of the Commission is necessary to decide any question.(2) Each Commissioner receives a salary of four thousand dollars per annum while that of the Secretary is fixed by the Legislature.(3)

Under Section 18, Article IX, of the Oklahoma Constitution, the Corporation Commission is given the power of supervising, regulating, and controlling transportation and transmission lines in all matters relating to the performance of their public duties, their charges therefor, and of correcting abuses and preventing unjust discrimination and extortion by such companies, and to that end the Commission from time to time prescribes rates, charges, classification of traffic, and requires them to establish and maintain such public service, facilities and conveniences as may be reasonable and just. The term transportation lines is defined as including railroads, street railroads, also freight car companies, express companies, car corporations, or companies in any way engaged in such business as a common carrier over a route acquired wholly or in part under the right of eminent domain.(4) The term transmission line is defined as including telegraph and telephone lines.(5) It was at first considered that the jurisdiction etenxded to all public service corporations.(6) Under the Constitution public service corporations include all persons, partnerships, and corporations authorized to exercise the right of eminent domain or to use any right of way or public highway in a manner not permitted to the general public.(7) The jurisdiction of the Commission being a delegation of legislative power, it is given a strict construction and is limited to those utilities expressly mentioned within its provisions. Thus all com-

(1) Sec. 16, Art. IX, Const. of Okla.
(2) Sec. 18a, Art. IX, Const. of Okla.
(3) Sec. 15, Schedule to the Const. of Okla.
(4) Sec. 33, Art. IX, Const. of Okla.
(5) Sec. 33, Art. IX, Const. of Okla.
(6) Shawnee Electric and Gas Co., v. Shawnee Water Co., 35 Okla. 454.
(7) Sec. 34, Art. IX, Const. of Okla.

panies exercising the right of eminent domain were excluded from the jurisdiction of the Commission save transmission and transportation companies which for all practical purposes included railroads, street railroads, telephone and telegraph lines, and that large class of public service corporations known as municipal utilities were excluded from the jurisdiction of the Commission. However, the jurisdiction thus given the Commision by the Constitution is by no means exclusive, but the Legislature may by law bestow upon the Commission additional powers and duties,(1) covering a wide range of action. The Comission may be vested with power to prescribe rates and charges to be observed in the conduct of any business where the state in the first instance has the power to prescribe rates and charges.(2) By virtue of the foregoing provision the power of the Commision can be made co-extensive with the police power of the state. This raises the fundamental question: to what extent may the state proceed in the original matter of regulation of business? Every business granted the right of eminent domain is given a privilege denied the public generally. In accepting the privilege they devote their business to a public use to the extent that the public has an interest in its operation But the regulatory powers of the state need not stop with those businesses that possess the right of eminent domain or require a franchise for their operation, but may properly extend to any employment which by condition, location, or economic importance gives those who conduct it virtual control over the public in a matter necessary to their welfare. The test whether a business is public or not should not be whether it requires a franchise for its operation or possesses the right of eminent domain, but if public or private should be determined by the relation of the public with respect to its operation. A striking example is the case of ice plants. Although they are required to obtain no franchise yet their rates and charges so vitally affect the public interest that they are now considered a public business and subject to state supervision. This bears upon the position taken by the Corporation Commission as will be pointed out later.

The Commission may also be vested with power in connection with the assessment of property of corporations or appraisements of their franchises for taxation or with the investigation of the subject of taxation generally.(3) The power given the Legislature to extend the jurisdiction of the Commission is neither mandatory

(1) Sec. 19 Art. IX, Const. of Okla.
(2) Sect. 19, Art. IX, Const. of Okla.
(3) Laws 1908 9, Ch. 18, P. 226.

nor exclusive, but the Legislature may in its discretion grant regulatory powers to commissions other than the Corporation Commission (2)

From the foregoing it is obvious that the potential powers of the Commision are extensive. The Oklahoma Supreme Court, in the case of St. Louis and San Francisco R. R. Co. vs. Williams, et. al.,(3) declared: "The Corporation Commission, by virtue of the provisions of Sec. 18, Art. 9, of the Constitution, is vested with extraordinary powers, being authorized to exercise not only legislative but also executive, administrative, and judicial functions."

The first legislature extended the jurisdiction of the Commission so as to include control and supervision over the physical connection and switching facilities of the railorads at all junction points and incorporated towns where two or more railroads are included.(1) By force of this provision the Commission is vested with the power to hear all complaints with reference to the switching and transfer facilities and may upon investigation or upon its own motion issue orders requiring the railroad companies to maintain such physical connections, including switching facilities and union depots, as the public interest may require. However, such order of the Commission must be predicated upon a gift to the railroad of the right-of-way or at such reasonable cost as the Commission may deem proper. The cost of the construction and maintenance of such facilities shall be borne by the respective companies as they may agree, or in case of disagreement, as the Commission shall direct. In addition to the power of regulating and controlling the conduct of the railroad companies in relation to their public duties the Commission by virtue of the foregoing legislation is vested with the additional power to regulate and control the public functions of the railroads in their relation to each other.

The jurisdiction of the Commission was further extended by what is commonly called the "Anti-Trust Law."(1) The purpose of this act, as set forth in the title, is "to define a trust, monopoly, unlawful combination in restraint of trade, to provide civil and criminal penalties and punishment for violation thereof and damages thereby caused; to regulate such trust and monopolies; to promote free competition for all classes of business." Under the act every act, agreement, contract, or combination in form of trust or otherwise, or conspiracy in restraint of trade or commerce within the state, which is against public policy, is declared illegal.(2) Under section 13 of the act, whenever any business because of its ex-

(1) Ch. 79, Laws of 1910.
(2) Sec. 8220, R. L. 1910.

tent and circumstances becomes a virtual monopoly by violation of the preceding section, and placed in such a position that its service and products are of a public necessity and the public vitally affected by its rates and charges; such business becomes a public business and subject to the jurisdiction of the Corporation Commission in respect to its rates, charges and condition of service.(1) The exact limitation of regulation by the Corporation Commission under the scope of this act is not yet well defined although several cases have arisen for adjudication. The first question that arose was, Were the public utilities such as electric, water and gas companies, excluded from Sec. 18, Art. 9 of the Constitution, included under the operation of the act? No doubt it was the intention of the Legislature as set forth in the title of the act to make a distinction between a natural and a virtual monopoly, between a public business *per se*, such as water, electric and gas companies, and a business private in nature but because of circumstances the operation of which has become a public concern. The legislature has differentiated public utilities where competition must necessarily be eliminated from businesses which admit of competition but in which because of certain circumstances, combinations or conspiracies, competition has been eliminated. Businesses of the latter class are those falling within the purview of the act. Such has been the ruling of the Oklahoma Supreme Court in which gas companies were held excluded from the operation of the anti-trust law.(2) Then what industries come within the act? Upon several occasions the power of the Commission to fix the price for ginning cotton has been before the Supreme Court for review. In each case the appeal was dismissed for lack of jurisdiction on the grounds that Section 20, Article 9, of the Constitution, which granted jurisdiction to the Supreme Court to review an order of the Corporation Commission did not include an appeal from an order of the Commission under the anti-trust laws. Hence the extent of power under the act was not directly passed upon.(3) But finally in the case of Oklahoma Gin Company vs. State(4), an appeal from an order of the Commission imposing a penalty for violation of its order the jurisdiction of the Commission under the Anti-Trust Law was directly assailed as invalid upon the grounds that such power was an unwarranted delegation of legislative authority and hence a violation of Section 1, Article 4 of the Constitution. The power of the Commission to

(1) Sec. 8235, R. L. 1910.
(2) Shawnee Gas and Electric Co. v. Corporation Com. 35 Okla. 454.
(3) Harris-Irby Cotton Co. v. State et al., 31 Okla. 603; Shawnee Electric & Gas Co., 31 Okla. 505.
(4) 63 Okla. 10.

declare a private business to be monopolistic in character and subject to regulation is a delegation of legislative authority but inasmuch as such power is delegated to the Commission by other parts of the Constitution such additional delegation by the Legislature under the Anti-Trust Laws is not a violation of the separation of powers. In 1913 the Commission entered an order declaring the Oklahoma Operating Company a monopoly and its business a public one, and prevented an increase in laundry rates above those at the time being charged without the permission of the Corporation Commission. In 1918, the rates of 1913 being non-compensatory, the Operating Company increased its rates in violation of the Commission's order. In an action brought against the Oklahoma Operating Company for violation of the order of the Commission, an appeal was taken to the Supreme Court of the United States. It was here held that Section 8235 of the Revised Laws of Oklahoma, 1910, was invalid, not, however, for want of jurisdiction on the part of the Commission, or a usurpation of authority, but invalid for the reason that no appeal from the order of the Corporation Commission was provided for except in contempt proceedings for violation of its order. The Supreme Court having no power to review an appeal from the order of the Commission under Section 8235, R. L. Okla. 1910, no opportunity of reviewing judicially a legislative rate fixed under the section except by way of defense to contempt proceedings instituted for violation of the act which is bent with so many difficulties that it infact amounts to a denial of due process of law.(1) This defect in the Anti-Trust Laws was, however, corrected by legislation which provided that all appeals from the orders of the Commission under Section 8235 should be governed by the rules applicable to appeals in the case of transportation and transmission companies as in Section 20, Article 9, of the Constitution of Oklahoma.(2) Thus the original power of the Commission under the Anti-Trust Laws is unimpaired.

Under the opinion of the Commission, the Anti-Trust Laws were designed for the purpose of the consumer and no protection being given, the producer.(3) However, it is important to note in this connection that in 1913 the Commission assumed jurisdiction of cotton gins under the Anti-Trust Laws and such jurisdiction was affirmed. In their annual report in 1919, the Commission urged the Legislature to extent their jurisdiction to include the regulation of ice plants, and threshing utilities, as complaints against these

(1) Okla. Operating Co. v. State, 252 U. S. 331; Okla. Gin Co. v. State, 252 U. S. 339.
(2) Ch. 5, S. L. Okla. 1919.
(3) 12th Annual Report, Oklahoma Corporation Commission, p. 3.

utilities are constantly being filed.(1) The Legislature, however, refused to act, but in the summer of 1921, the Corporation Commission assumed jurisdiction of ice plants and attempted to regulate the price of ice in various Oklahoma cities under power conferred by section 8235, R. L. Oklahoma, 1910, and their jurisdiction in this direction is now before the Supreme Court.

Having, therefore, exercised under the Anti-Trust Laws jurisdiction over cotton gins, laundries, and ice plants, where will their jurisdiction stop? As pointed out, the exact limitation is not well-defined, but any business that the state in its sovereign capacity may regulate may come within the jurisdiction of the Commission. Before the Commission may exercise jurisdiction under the Anti-Trust Laws, however, a monopoly in fact must exist and whether or not a business is a monopoly is ultimately determined by the court.(2)

The powers of the Corporation Commission were greatly extended by the laws of 1913 which gave to the Commission general supervision over what are commonly called municipal utilities.(3) These utilities include those corporations operating directly or indirectly for a public use,

(a) for the conveyance of gas by pipe line.

(b) for the production, transmission, delivery, or furnishing of heat or light with gas.

(c) for the production, transportation, delivery, or furnishing of electric current for light, heat, or power.

(d) for the transportation or delivery of water for domestic purposes or for power.

There is, however, excluded from the operation of the act all utilities municipally owned or operated. Over the utilities first mentioned, the power of the Commission is complete; it is vested with full powers of rate fixing and of making regulations affecting their service, operation and management. To that end it is given full visitorial and inquisitional powers, together with such incidental and implied powers which may be necessary to carry out the purpose of the act. The powers thus given apply to utilities within or without a city, even to those cities that have their own charters.(4)

Under the laws of the territory of Oklahoma, the cities were granted the power through their city council to make contracts in respect to the erection of gas and electric plants, and they could

(1) 12th Annual Report Oklahoma Corporation Commission, p. 1.
(2) Federal Trade Com. v. Gratz, 253 U. S. 170.
(3) Ch. 3, S. L. Okla,. 1913.
(4) Bartlesville v. Corporation Commission, 199 Pac 398.

grant to any person or corporation the use of the streets and alleys for supply such service.(1) However, no franchise thus granted could be exclusive nor for a period longer than twenty-one years; and all such grants were subject to all reasonable regulation by ordinance as to use of streets and price to be paid for such service. The same privilege was continued after statehood(2) with the exception that the franchise could be granted for twenty-five years, but no franchise could be granted, etxended, or renewed without the approval of a majority of the qualified electors voting at such special or general election.(3) While the power of regulation is given to the Commission, yet the granting of a franchise is in the hands of the city, but there is reserved to the state "control and regulation" of such use and enjoyment.(4) The city as a condition precedent to the granting of a franchise may stipulate therein the maximum rate to be charged but such rate is subject to the subsequent modification of the Corporation Commission. The question of changing the terms of a franchise arose in the case of Pawhuska vs. Pawhuska Oil and Gas Company.(5) By the terms of the franchise to the Gas Company in 1909, it was provided that "Said grantee shall furnish natural gas to the cities at a reasonable rate, which shall in no case exceed fifteen cents per thousand cubic feet of gas." Acting under the authority conferred by the laws of 1913, the Corporation Commission increased the rates from fifteen to twenty cents per thousand cubic feet. On appeal from the ruling of the Corporation Commission, the Supreme Court of Oklahoma held that rate making was a sovereign function and the state in its discretion could delegate such power to a city or withhold it entirely. Thus, whatever power of regulation had been delegated to the city by section 593, R. L. 1910, such power had been repealed by the laws of 1913, conferring jurisdiction on the Commission:

> "The authority granted to the City of Pawhuska____ was the power delegated to it by the state, and said city only had such right until such time as the state saw fit to exercise its paramount authority____"

The decision was reaffirmed in the case of the City of Durant et. al.

1) Wilson R. L., Sec. 398.
2) R. L. 1910, Sec. 593. The cities of old Indian Territory were governed by Marshall Digest of the Laws of Arkansas, which permitted cities to grant exclusive franchises and for an indefinite number of years. Thus an exclusive franchise for a period of sixty years was held valid. Tahlequah v. Quinn, 82 U. S. 886.). While a franchise under the Constitution of Oklahoma may not be exclusive, yet such franchise is a protection against one operating without a franchise—Bartlesville Electric Light & Gas Co. v. Bartlesville Interurban Co., 109 Pac. 228.
3) Sec. 5, Art. 18 Const. of Okla.
4) Sec. 7 Art. 18, Const. of Okla.
5) 166 Pac. 1058; 250 U. S. 393.

s. Consumers' Light and Power Company,(1) and recently in the City of Bartlesville vs. Corporation Commission.(2) In the last case the order of the Commission violated a provision of the charter of the City of Bartlesville. By section 6, article 11, of the home rule charter adopted by Bartlesville under section 3, article 18, of the Oklahoma Constitution, it was provided that the city reserved unto itself the regulation of rates and services of gas, electric, street railway and telephone companies, operating within the city. By section 539, R. L. Okla. 1910, whenever a provision of a city charter concerning a municipal matter is in conflict with the laws of the state the provision of the charter should prevail. Notwithstanding the foregoing provision the rate fied by the Commission was upheld on the theory that rate-making was more than purely municipal concern, it was a sovereign matter of supreme legislative interest and hence superior to the interest of the chartered city. This case touches the vital question in the matter of regulation of public utilities within a city.(3)

The effects of these decisions leaves the cities of Oklahoma in this position. While the cities have the power to grant franchises for the use of their streets and alleys for a period not exceeding twenty-five years, the regulation of rates and services, which forms the integral part of a franchise, is left to the Corporation Commission. This is true even if the franchise was granted before statehood.(4)

The legislature in 1915 declared a cotton gin to be a public utility and its business of ginning cotton a public one and subject to regulation as to rates, charges and condition of service by the Corporation Commission in the same manner as the regulation of transportation and transmission companies.(5) The law further provided that no person shall operate a gin until a license for that purpose shall first be secured from the Corporation Commission. Such license is not a matter of right but the commission may exercise its discretion as the necessity of the gin in a community, and as to the reliability and qualification of the applicants. But should a petition signed by fifty producers of cotton in the immediate vicinity be filed with the Commission, the Commission must issue the license. Under the power here given, the Commission is not confined merely to fixing rates charged for the ginning of cotton, but may regulate those facilities incident to the ginning of

(1) 177 Pac. 361.
(2) 199 Pac. 396.
(3) Ibid.
(4) City of Sapulpa v. Oklahoma Natural, 192 Pac. 234.
(5) Chap. 176 S. L. 1915.

cotton as the rates to be charged for baggings and ties furnished by cotton gin operators in the ginning of cotton.(1)

The public utilities having been placed under the jurisdiction of the Corporation Commission, the regulatory powers of the Commission are co-extensive with the police powers of the state. The Commission may make all valid and lawful orders prescribing rates and condition of service that the state originally could have made in the exercise of the police powers.(2) The orders of the Commission are the same as laws passed by the legislature and the utility is subject to the orders as if they had been made a part of the contract. A statute requiring all the gas supply to be metered is a valid exercise of the police power as a means of conserving our natural resources, and may be enforced, the terms of the franchise notwithstanding.(3) As a method of regulation the Commission has power to discount gas bills for insufficient service, for the reason that the furnishing of gas is not the only service of a gas company but efficient service includes adequate pressure at all times and the failure to transport gas with sufficient pressure is a failure to render service.(4)

The most far-reaching power of the Commission, and the one that most concerns the people of the state, is its rate making function. In the matter of rate making, the following elements must be considered: reasonableness of the rate, special adjustments, discrimination, and classification.

The Constitution provides that rates, charges, and regulations must be just and reasonable, and what constitutes a reasonable rate touches the crux of the whole utility question, as adequate service and rates are interdependent. What is a reasonable rate does not admit of exact definition. Because of the countless elements that enter into rate making each case must be determined in the light of its own circumstances; and the courts have, for good reasons, declined to make a definite and absolute finding of a reasonable rate.

Should the Commission undertake to fix rates it is a general rule that the value of the plant must first be ascertained and a reasonable rate based thereon.(5) This rule has, however, two applications. The Commission may in its discretion grant either a temporary or a permanent rate. If it appears by the order of the Commission that the rate thus established was somewhat per-

(1) 196 Pacific, 133.
(2) 78 Okla. 5.
(3) 78 Okla. 5.
(4) Pawhuska v. Pawhuska Oil & Gas Co., 148 Pac. 118.
(5) Okla. City et. al. v. Corporation Commission, 80 Okla, 194.

manent and was established as a reasonable return upon the company's investment, all things considered, then the value of the plant must first be determined. If on the other hand the present income of the public service corporation is insufficient to pay the operating expenses pending a determination of the valuation of the plant, the Commission may establish a temporary rate which need not be based on a value of the property.(1) The courts have generally sanctioned temporary rates to meet an emergency or determine by experiment or trial what rates would be just. If this power were denied and the Commission was forbidden to prescribe rates until it had made a complete inventory and valuation it could grant little relief at a moment when re-adjustment has created most unstable conditions. In the case of Muskogee Gas and Electric Company vs. State(2), the Supreme Court held:

> "Neither is the fixing of rates by the Corporation Commission limited to any particular theory or method nor is valuation a necessary prerequisite to prescribe rates."

If by this the court includes both temporary rates and those permanent, then the court reversed itself in the more recent case of Oklahoma City et al. vs. the Corporation Commission(3) in which it held that a rate to be charged for service must be based upon a value of property.

Admitting that a reasonable rate must be based upon the fair value of the property of a public service corporation at the time it is being used by the public, the fundamental question still remains: What is a proper method of determining such valuation? Since the war when equipment and plant construction and maintenance have often times doubled in value in comparison with pre-war prices, the method of proper valuation has been of prime importance. The public utilities appearing before the Commission have urged valuation be made on the basis of present day reproduction costs. No case has arisen during this abnormal period in which the Supreme Court of Oklahoma has considered the method of valuation. The leading case in Oklahoma upon the question of valuation is the case of the Pioneer Telephone and Telegraph Company vs. Westhaver(4), in which the court declares:

"No inflexible method for the ascertainment of the value of the property used in the service has been fixed by legislative bodies dealing with rates, or by the courts in determining the validity of rates, and from the nature of the subject no inflexible method can

(1) Bartlesville v. Corporation Commission, 199 Pac. 398; Muskogee Gas and Electric Company v. State, 186 Pac. 736.
(2) Ibid.
(3) Okla. City v. Corporation Commission, 80 Okla. 194.
(4) 29 Okla. 429.

be fixed. Sometimes the present value is arrived at by ascertaining the original cost of construction and all betterments, and deducting therefrom for depreciation; but this method does not always prove to be fair and just. If there was extravagance and unnecessary waste in the construction, or, as is often the case, ficticious stocks and bonds issued, the proceeds of which did not go into the original construction, such method would prove unfair to the public. On the other hand, where the market price of the physical units or of the labor entering into the construction of the plant has advanced since its construction, the original cost may be much lower than the present value, and for that reason be to the owner of the plant an unfair determination of its present value. The method most frequently used is to ascertain what it will cost to reproduce the plant, or the cost of its replacement at the present time, and deduct therefrom for depreciation in the existing plant. Both methods may be used and considered in ascertaining the present value, and both are often resorted to, as was done in this case."

Under the authority of this case, the original cost of construction as well as the reproduction cost should be considered in arriving at a fair valuation. Under normal conditions the reproduction cost would probably be a fair test, but to base the fair value of a plant upon a theoretical cost of reproduction during a moment of high prices caused by abnormal conditions would be as unfair to the public as the reproduction cost theory would be unfair to the investor during a period of abnormally low prices. In the Westhaver case going concern value was considered in the valuation of the plant, which was estimated at twenty percent of the reproduction cost. The sum expended each year for current repairs is not counted in the depreciation of the plant as a whole and a depreciation of seven percent a year was allowed in the case of a telephone plant.

Any rate fixed by the Commission must be for services to the people directly. Under the Constitution(1) "rate" is defined as meaning the rate of charge for services rendered, and before the Commission may order a rate it must be for services rendered directly to the people by the company affected. If there is no direct obligation between the consumer and the utility, no jurisdiction is conferred. Thus an order imposing an extra charge upon the consumers of gas furnished by the Oklahoma Electric & Gas Company for the creation of a special fund for the benefit of the Oklahoma Natural, a producing company, with whom the people had no direct relationship, is invalid.(2)

(1) Sec. 34, Art. IX, Const. of Okla.
(2) Oklahoma City v. Corporation Commission, 80 Okla. 194.

However, it has been held that the Commission may interfere in the relationship of two public service corporations, even to the extent of altering their contractual liability.

Should the Commission fix a rate so low as to be confiscatory, the public utility may secure an injunction to enjoin the enforcement of an unreasonable rate. The injunction proceedings may be brought in either the Supreme Court of the state or the federal court, as an unreasonably low rate is equivalent to taking property without due process of law, hence, a violation of the Federal Constitution. In a number of recent cases the federal court has enjoined the enforcement of the Commission's orders.

The power of the Commission to promulgate rates is a legislative power, and in its exercise involves legislative discretion and policy(1) and while the hearing for the determination of a reasonable rate upon petition by either the public or the utility is judicial in its nature, the Commission, is vested with administrative functions which enables the Commission, on its own initiative, to investigate and determine at any time rates and regulations. The Commission is specifically enjoined by the Constitution and various legislative acts to keep itself fully informed as to the physical condition, management, and valuation of public utilities within the state.(2)

To that end the Commission is vested with full visitorial and inquisitorial powers(3) as to the management, rates, valuation, receipts, capitalization, books, and records of all public utilities. The Comission may, whenever necessary, require statements to be made under oath as to the management, method and procedure of doing business. In the execution of its administrative functions the Commission is greatly handicapped by the lack of funds which prohibits it from employing a sufficient staff of experts to properly determine all the matters relating to the operation of public utilities. No doubt much of the difficulty in rate making under the existing abnormal conditions is due to the fact that the Commission is not able to employ its own experts to determine the proper valuation of a public utility. If the Commission is to fulfil properly the purpose of its creation and the duties imposed by the Constitution, it must be something more than a court to pass judicially upon the question presented, but must be able to determine, upon its own initiative, the condition of public utilities in the state.

(1) Ft. Smith & Western v. State, 25 Okla. 866.
(2) Sec. 18 Art. IX, Const. of Okla.; Ch. 93, S. L. Okla. 1913; Sec. 29, Art. IX, Const. of Okla.
(3) Ch. 93, S. L. Okla. 1913.

REGULATION FROM THE VIEWPOINT OF THE UTILITIES

J. F. Owen, General Manager Oklahoma Gas and Electric Co.

It is not my purpose in handling the subject—"Regulation of Public Utilities"—to enter into an academic discussion as to the merits of regulation. The time for theorizing is past, for the regulation of public utilities is a fact and will probably always remain so. Merely that the record may be straight, may I say that in common with many others I viewed with alarm the possibility of state regulation. I have changed my mind. Not wholly because of the operation of state regulation, but rather because the development of the public utility industry, particularly the electric branch of the industry, has been so rapid in the last few years and the possibilities of continued rapid development are so great for the future that only state regulation can meet the needs of the hour.

Development in the electrical business has definitely demonstrated that the future of the industry lies in our ability to generate power in large quantities, and to substitute for the present more or less wasteful small plants, a few large generating stations where the economies only possible in such stations may be introduced and the results of these economies apportioned to the ultimate consumer. Men today are beginning to look forward to the time when we shall need to conserve coal in much the same manner as we are now talking of conserving natural gas. In the process of the conservation of coal, electrification of railroads and electrification of all classes of industries is inevitable. This means generating stations located at strategic points where plenty of cheap fuel and water is available. It means the transmission of the current generated at these points over great distances and the possibility of supplying intermediate towns with a regular and cheap service.

Therefore the problems confronting regulatory bodies are such that no one community can hope to deal with them in the broad-gaged way in which these problems must be met and solved, if the utility is to function for the greatest good of the greatest number.

We are not concerned, therefore, I take it, in the discussion of this subject with the theory of regulation, but rather with the practical effect that regulation has had on the public and the industry; the obstacles in the way of carrying out the ideal administration of the regulatory bodies established for that purpose. It is well to recognize the fact that all administrative officers in this democracy of ours are responsive and responsible to public opinion. Regardless

of how great their independence of thought and action may be, there is always unconsciously, and perhaps rightly so, an attempt to reflect public sentiment as they see it and find it. We had just as well at the outset face this fact—that if it were possible to question a thousand representative members of almost any community who are not identified in any way with a public utility, as to what they thought of the regulation of public utilities, the answer probably would be—"It might be all right for the utilities but damned hard on the public." It is just as certain that if you were to put the same question to an equal number of men who are identified financially or otherwise with public utilities, the answer would be—"Regulation is probably all right from the point of view of the public, but that it is damned hard on the utilities." The reason for the divergent answers and the inevitable conclusion that at the present time hardly anybody is satisfied with regulation, is found in the abnormal conditions through which we have been passing in the last two or three years.

May I say this—that the Corporation Commissioner or member of a state public utility commission any where in the United States who in the past three or four years has been able to satisfy anybody is more than a man, and almost approaches the characteristics of the Divine. He is very nearly omnipotent. The answer to this is found in the difficulties which have confronted public utilities themselves, difficulties it is true which all business organizations have had to face, but which have affected public utilities in a particularly adverse manner. I need not discuss the aftermath of the War, the tightness of the money market, only insofar as it affects utilities that are and have been subject to regulation. During the last few years, issues of securities involving vast sums have fallen due, and it has been incumbent on the utilities to meet these obligations. It was necessary to meet the obligations at the very time. It was a matter which could not be deferred. Furthermore, the utilities were in no position, any more than anyone else, to foresee when the financial obligations were originally assumed and their terms of years were fixed, that they would fall due in difficult times. This situation made it necessary to obtain large sums of new capital under the prevailing conditions merely to take the place of retiring capital. The war, furthermore, forced upon the nation a policy in industry which required an expansion of power facilities much greater than the funds which could be secured permitted. The utilities generally exercised every resource to secure the money needed for this expansion. Although the Federal Government used its power to assist many of the industries in which

it was deeply interested in the prosecution of the war, the aid received by the public utilities was comparatively very small and did not go far toward assisting them in financing the construction required of them. In many cases money could be borrowed by the utilities only on terms which may be mildly described as very severe. In many cases money could not be borrowed in the markets at all but those interested in the utilities came forward with their personal aid to carry them along.

This situation enabled private industries to devote their energy and capital more completely than ever to the manufacture of required articles while the power required for that purpose was more extensively demanded of the utilities. This again required the utilities to expand and increase their capital expenditures at a time when capital was difficult to obtain and when the terms upon which capital could be obtained, consequently, were harder than before.

During this period many short time notes were floated. This was considered the best policy because it enabled the utilities to tide their financial obligations over, in some measure, to a time when money conditions would be easier. However, the cost of doing this was enormous on account of the heavy selling expense of the notes as well as the high rate of interest which they perforce bore. The question was not simply whether this was better than to attempt to float long time bonds to meet maturing obligations and improvements at the time. There was no market whatever for long time securities. The fact that all financing was done in this way by almost every industry is evidence enough that it was the only policy which could be followed.

The heavy interest rates which were thus borne through note issues became a heavy drag upon net earnings. The discounts and selling expense of the issues, became a further burden which will for some time to come constitute a drain upon earnings either through amortization from earnings or interest on new bonds issued to retire the notes.

During the past year, conditions having improved somewhat the time for issuing short term notes appeared to have passed, and as a result recent financing has been carried on chiefly through the medium of longer termed bonds. These bonds have been issued to retire short term notes and the former long term bonds simultaneously falling due and to furnish new fixed and working capital to meet the growth of business.

Add to the financial difficulties, the constantly mounting operating expenses incurred during the later years of the War, and the

depletion of net earnings long before it was possible to secure the increased rates necessary to meet increased operating conditions; the necessary slowness with which these increases were in most cases granted; the reluctance of the public to the granting of any increases at all, and in many cases the active opposition of the public to the increases; tended to further retard in many cases the much needed additions to earnings.

This difficulty of financing is but one of the problems which utilities had to confront. Operating costs mounted by leaps and bounds. Fuel costs doubled in price. Labor advanced and what with heavy cost of money to meet extensions, and the constant depletion of net earnings through interest charges with the added operating expenses, utilities were forced to appeal to the regulatory bodies for help, because as indicated above, very little if anything could be obtained from the Government. Most utility commissions were slow in granting increases, though be it said to their credit that in most cases they met the emergency squarely and fairly, and when once they determined to act they did so without fear. They were criticized. They were condemned by the unthinking who did not want any increases in utility rates, when they were already burdened by high costs of other commodities. Utility commissions were condemned by the public for increasing rates, and were condemned by the utilities for not granting all the measure of increase asked for, and which in a majority of cases was necessary, and for the slowness with which they acted.

Again the majority of the utilities when operating expenses began to decrease were and are of the opinion that they should be allowed the increased rates for a time until they have had an opportunity to recoup some of the losses sustained by reason of the delay in increasing the rates when operating expenses began to mount. On the other hand, commissioners were met by demands on the part of consumers to the effect that the minute operating costs began to go down these decreases should at once be reflected in decreased rates. The above in explanation of the statement previously made that the public utility commissions were probably damned from both sides of the question.

Just here I am going to lay down a few statements, which to [illegible] explanatory.

1. The interests of the public are best served by the operation of public utilities under private ownership and private control, with proper wholesome regulation.

2. Regulation by state authorities offers the best means of proper control.

3. A properly financed and healthy public utility is an important element in the development of any city, community or state, and the development and growth of the community is more likely to be retarded by methods that hamper and restrict the utility in its efforts to serve than are the citizens of the community to be filched by unreasonable profits.

4. The above being true, the ultimate good of the communities and the public lies in close harmony and cooperation between regulatory bodies, governing bodies of cities, and public utilities themselves.

I should like to discuss at length the first statement. It is obvious, however, that this in itself if entered into would take more than the time allotted to me. I shall have to dismiss it therefore with what may appear as a dogmatic statement—that people are more and more coming to realize that private ownership under proper regulation means encouragement of initiative, incentive to introduce greater economies, the absence of paternalistic tendencies, ultimately cheaper and better service to the individual and the elimination of the evils that have grown up around municipal ownership. Finally, the results obtained in many European countries with municipally owned utilities are indicative of the danger both to the service of the utility and to the freedom of the community from the fact that there has been built up around the utility a political machine that makes its own existence the paramount object and service results secondary.

I have already suggested some of the fundamental reasons as to why state regulation is preferable to local regulation.

I should like to have time to outline a picture more fully than I have been able to do in this article, of what is ahead in the matter of the development of the electrical industry.

I should like to be able to inspire this gathering with the vision of the possibility of their contributing much to the advancement of civilization and to the conservation of natural resources by cooperating in the great work that is ahead of all of us.

Natural gas will soon play out. More remote is the possibility of the exhaustion of coal. Something must take its place in the heating of our homes and as the prime mover of industry. Electricity is destined to fill this need.

It will be obvious that the problems connected with the proper development of the industry are big problems and must be handled in a big way. It is big business in every sense of the term. Big men will be required to grapple with these problems and to bring them to a satisfactory solution. Money by the millions will have to

be obtained. The development of latent hydro-electric possibilities must be brought about, even those that today seem chimerical.

Enough of the problem confronting us. How shall we meet it. Certainly not with the attitude by which too many business men and city officers have approached the public utility problems in the past. If money is to be obtained for this tremendous development, business men and city officials must recognize the fact that money must be paid its wage. Men with money must be encouraged to offer it to the utilities. It must be made easy for the utilities to get money.

I have spoken somewhat at length in the early part of this talk of the financial difficulty that confronted the utilities at the early part of the war. It is my idea that things should be made so favorable to the utilities because of their important place in community life and development that men of money would naturally seek investment in utility securities because they considered them more stable and desirable than other securities, and that rewards in utilities should be even greater than in any other line of endeavor.

Such certainly has not been the case in the past few years. We find the spectacle of a number of business men here in our own city gathering together and protesting to the Corporation Commission that under no circumstances would they want a raise in the price of gas. Did they investigate to the slightest extent the merits of the question before them? Did they learn whether the utility was receiving a proper return on its investment? Did they go into the broader phases of the situation to learn whether their interests in the last analysis would be better served by an increase or not? No!—they only knew that they did not want to pay any more for gas and blindly protested. The facts at the time, as might have been disclosed from the records of the Commission, were that on any sort of a fair valuation the gas utility was not receiving anything like a return on the investment used and useful in the distribution of gas. What chance has the utility to reach out and secure money for new extensions and betterments to the towns in the face of an attitude such as this. How much encouragement was the Commission given to do what it undoubtedly knew should be done? I said at the outset that commissioners were prone to reflect as nearly as possible public sentiment. As to whether this is a proper attitude is perhaps susceptible of some discussion, but commissioners are only human and do what perhaps you and I would do in the same place.

The whole big problem then gets back to the business interests and to the thinking men of the community, and I have no hesitancy

in saying that the needs of today and the needs of the future demand that business men shall give more thought and study to the problems that affect municipal development and municipal growth, and shall be able to discuss these problems intelligently and shall act after they have reached conclusions based on careful study. To this body of men representing as it does the guiding force in the leading cities of our great commonwealth, may I urge that you, as one of the chief functions of your office study these problems with an open mind and with a desire to bring about a program of perfect harmony between the municipality and the utility to the end that the public may be best served. This, it seems to me is an important part of your job.

I am not without realizing that the burden very largely and rightly so, falls on the public utility itself to obtain the proper attitude from the public, nor am I attempting to evade the fact—for it is a fact—that much of the distrust which the public feels toward the utility, and much of the difficulty in securing this co-operation so much to be desired, is traceable to acts of utilities in the past. There have been injustices. There have been deeds of arrogance and lack of common courtesy in the administration of public utilities, and I don't say that it is enough to assert that this is part of the past But whether it is enough or not, it *is* a part of the past, and the future and the present demands that we 'let the dead past bury its dead,' and realize that the public utility of today regards and honestly considers itself a public servant in the biggest and broadest sense of the word, and is proud of its ability to serve. It is time therefore that we forgot the past and looked forward to the future.

As I say, the burden in the largest sense falls upon the utility to develop a healthy public sentiment, and this can be brought about only by courtesy and efficient service. The development of courtesy in the organization of the utility itself is one job. The question of efficiency of service is not solely its job, but is partly yours. It is yours to the extent that ability to finance the utilities depends very largely on your attitude and your understanding of the utility needs, and financing is a very large element in the efficiency of service which utilities may render.

The whole question of regulation therefore gets back in the last analysis to the public. It is encouraging to many utility men to note that one by one many newspapers are really making a study of utility problems, and the question of utility regulation, and are gradually getting the broader aspects of the situation. It is particularly gratifying to see some of the editors of the smaller papers

showing a broad knowledge of their possibilities and needs.

Only this morning two clippings came to my desk. One from the Oklahoma Hornet, published at Waukomis. It follows:

> Amos Avery says to print a piece in the paper about the troubles of himself and neighbors, Charley Boedecker, Joe Matussek and others, Amos says they have been trying to get service from the light company for some time but so far have been unable to secure the service. If the publication of this notice will help any we'll gladly give it another insertion in the Hornet. Amos should induce more people to live in his part of the town."

The other from the Garber Sentinel:

> "This country is evidently on the eve of very great development. The possibilities of this great land of ours can be understood only by minds educated up to that standard necessary to grasp its greatness. The production and transmission of electric energy is only in its infancy. Before many more years every possible means will be used to increase the supply of this most subtile of forces. It is claimed that there is enough waterfall which, if harnessed, to produce electric energy sufficient to supply all the needs of millions of future homes and mines and factories and even supply sufficient to electrify every line of railroad on this continent.
>
> The companies now in existence, like the Oklahoma Gas & Electric Company, are just the pioneers in what will be eventually the greatest engineering projects ever conceived by the mind of man. Electricity harnessed to the unlimited forces of nature will become man's most obedient servant and will warm his house, sweep his rooms, curl his hair, iron his clothes, turn night into day at his pleasure, vibrate his frame, wing him through the air at will and do about all that man can do but reason. Factories and mills and mines and oil fields and roads will all eventually be electrified. The forces that produced the ancient thunders of Jove, beneath which man has trembled in fear through centuries of ignorance, is being harnessed to the car of progress and if man continues to progress it will be his most submissive slave."

The former shows recognition of the fact that utilities cannot be compelled to extend into unprofitable territory for the benefit of the few without the many having ultimately to feel the burden, and that the few who are benefited should defray a portion of the expense.

The latter has caught the vision of the possibilities of electrical development. Both are papers in small towns. The editorials are published merely as an indication that when papers in towns like these, at the very grass roots show the broad grasp of the situation that these papers show, there is hope in the future.

May I close with suggestions as to how, in my judgment, the

policy of the formation of utility commissions could be changed so that the commissions may function as they should. I believe that one of the draw-backs is the short terms of office of the commissioner. The tenure of office should be longer. In fact, I believe that like the Federal Judges they should be selected for life or during good behavior.

Second. Salaries paid the commissioners should be greatly increased.

THE CORPORATION COMMISSION'S VIEWPOINT AS TO REGULATION

Campbell Russell, Chairman of the Corporation Commission

Ordinarily when invited to speak upon an occasion of this kind I have assumed, and I think correctly so, that what was desired was a few moments' recreation and amusement, a good story, a hearty laugh and a pleasant memory.

In accepting *this* invitation I did so with the understanding clearly in mind that what is wanted this evening is not entertainment but that I am expected to "talk shop."

I am a "hired man;" for some years I have drawn my monthly wage from the public treasury; you gentlemen are among my employers. You want to know how well I understand my duty.

The city dwellers whom you represent are the principal patrons of the public utilities which are under the jurisdiction of the Corporation Commission, of which I am now the senior member. The railroads serve all the people, rural as well as urban; also a large percent of our farmers now have telephone service; a few, very few, have the luxury of natural gas and electricity. The farmer *could* get along without any of these, but the very existence of our modern cities is dependent upon public utility service.

An inexperienced person might assume that there are only two viewpoints from which to consider public utility regulation—the owners and operators seeing through one colored glass and the patrons through another. In actual practice there are so many shades of colored glass and such a variety of blending, overlapping and divergent views entertained and expressed that it would be an endless job to classify them. There is apparently a much greater variety of views expressed than are really entertained, the same individual expressing a different view each time you meet him, depending partly upon the condition of his liver, partly upon his digestive organs and somewhat influenced by the amount of information or lack of information possessed by him at the time of the interview.

One viewpoint recently advanced comes from a source which is entitled to serious consideration, and I cannot, perhaps, more clearly and forcefully place before you the Corporation Commission's viewpoint than by contrasting it with the viewpoint presented in the September-October issue of the Employer, a periodical presumed to reflect the views of a large and very capable and influential class of citizens.

If the viewpoint advanced in the Employer is correct, then the

viewpoint of the Commission, as now organized, is wrong, and you gentlemen have very properly called me on the carpet—for which I thank you.

I recognize the membership of the Municipal League as the official representatives of my employer—the public. If Oklahoma was a big department store you gentlemen would be the floor walkers; considering the state as a big labor union you are the walking delegates.

I am one of the hired men—I have been on the regular p-a-y r-o-l-l for nearly five years—if I do not have the proper viewpoint, a correct conception of my duty, you should ascertain that fact and report to our "boss" (the public) so that he (they) may prepare to give me a p-a-r-o-l-e.

First, I will place before you the viewpoint as expressed in the Employer editorial, from which I quote :

> "Campbell Russell, Chairman of the Oklahoma Corporation, is a judge. And yet he sits continually in cases in which he is interested personally, and blithely hands down decisions in matters affecting his own pocketbook.
>
> "One of the most flagrant instances was his recent hearing on cotton ginning rates. Russell is one of the largest individual cotton growers in the state. The price of ginning is certainly of much interest to him. And yet when the ginning case came before the supreme court (undoubtedly he meant the Corporation Commission as the Supreme Court never sat on that case) he did not disqualify himself, as the ordinary conscientious judge would have done, but instead he sat throughout the hearing and rendered a decision materially reducing the rates—a procedure to his own financial benefit. * * * There is his complaint about alleged discrimination of the Harvey houses against coatless diners for example.
>
> "Russell himself made the comp'aint against the Harvey system. Then he sat as principal judge in the case and after hearing his own complaint, handed down his own decision. Russia, with its soviet courts, exercising arbitrary and unlimited authority, can scarcely show an instance of such autocracy as this.
>
> "Isn't it about time something is being done about Mr. Russell?"

Now I am not bringing this out as a personal matter but to contrast the viewpoint—if the viewpoint behind this editorial is right, then the viewpoint of the Commission is wrong, and the Commission needs overhauling.

The viewpoint advanced in this editorial is that a Corporation Commission should not patronize a public utility operating under the jurisdiction of the Commission, and that when the question of rates for any public utility of which a Commissioner is a patron

is to be heard, he should step aside and permit the governor to appoint some "disinterested person" to hold the hearing and render decision in that case.

A brief analysis of this viewpoint is not out of place. It emanates from such distinguished authority that it should not be lightly cast aside.

In the cotton ginning case referred to, two Commissioners would have stepped aside and been replaced by "disinterested" substitutes. When it came to a question of rates for railroads, street cars, electric lights, natural gas, telephones, all three Commissioners would have to step aside—we are all patrons of these utilities.

I will not follow this up by attempting to portray the troubles which the governor would have in finding "qualified," "disinterested" substitutes to do the work.

The point I want to bring out is this:

Is the patron of a public utility interested in denying justice to the company or companies that serve him?

Is the farmer interested in denying to the horse that pulls his plow, suitable feed (in ample quantity) and good shelter?

Who is it that is interested in having the very best type of cotton gins and having them maintained in condition to render prompt, efficient service?

Surely it is the man who has cotton to gin.

Who it it that is interested in a good, efficient electric plant, one that will have the "juice" ready every time he presses the button?

Who is it that is interested in having good telephone service? Good gas service, regular service?

Who is interested in good street car service, the man who uses an auto, or is it the man who must needs stand on the corner and wait for the street car to carry him to his daily labor? These questions carry their own answers.

You may find an empty-headed negro trying to make a living working a starved horse, but every intelligent farmer, every intelligent drayman, who is watching his own interest, wants to keep his team in the pink of condition, and he isn't afraid to trust himself to measure the feed. He doesn't find it necessary to get a disinterested hireling to do the feeding, for fear that he will starve the team.

I do not want to get personal but I am only quoting public records when I say that the two Commissioners who had cotton to gin signed the order fixing ginning rates. I might say right here that neither of us had as much cotton to gin this year as we would

have liked to have had—we hope to have more during coming years, and are interested in having good gins and good ginners ready to serve us in coming years, and *we fixed the ginning rate with that in view.*

The only Commissioner really "qualified" to sit on that case (according to the viewpoint of the Employer editorial) signed a dissenting opinion.

Upon what grounds?

Because self-interest had impelled the two of us who had cotton to gin to fix the rate too low? On the contrary we authorized a higher rate than he would approve.

Those who wrote the Oklahoma constitution deemed it wise to provide persons owning stocks, bonds or other interests in public service corporations, should not serve as Commissioners. They clearly did *not* deem it wise to provide that the *patron* of a public service corporation should be held as disqualified to serve in that capacity.

The viewpoint of the Corporation Commission is that in regulating public utilities we should keep always in mind that these public service corporations should be in *fact* what the name implies —*public servants;* also keeping in mind that the "laborer is worthy of his hire," and that you can't make "brick without straw"—leastwise if the "bricks" are to be of the "straw" type we cannot hope for good quality and ample quantity unless plenty of straw be made available.

The time-honored phrase of the "man-made man and the God-made man" never appealed to me in connection with public service corporations. I think a horse make a better comparison.

This is an age when we are all clamoring for efficient service —that presupposes permanent, continuous service. You cannot have permanent, efficient horse service unless you:

First, provide plenty of feed, suitable care and proper harness, and,

Second, provide the necessary funds to get a new horse when the old one wears out.

You don't turn the horse in the corn field nor leave the crib door open—the appetite of a horse often exceeds his ability to transform food into service—ditto as to public service corporations.

It is the duty of the Corporation Commission as to each public utility :

First, to see that the plant is maintained in condition to render uniform, efficient service at all times, and to all people who are

so located that it is practical and feasible to serve them economically from a given plant.

Second, to fix the lowest rate for which continuous, satisfactory service can be maintained.

Third, to see that charges are equitably apportioned among the various patrons of the utility.

To secure these results many things must be considered.

First, the rate of return upon the investments necessary to maintain service must be high enough to attract the necessary new money as the business grows.

As to just what rate of return is necessary at a given time will depend partly upon the demand for money in other lines of business, and partly upon the reputation of each company for paying its dividends regularly and promptly. In order to fix a suitable rate the Commission must know:

The value of the property.
Costs necessarily incurred in operating same.
The amount necessary to meet depreciation.
Prevalent economic conditions.

Should also see that all sums allowed and earned as depreciation are strictly guarded so that they will be available whenever needed.

Overhead expenses must be carefully scrutinized—there should be no "General Managers," who do not manage, and no Vice Presidents, who do not preside (or work) drawing fat salaries.

Public utility rates cannot be changed every time the price of fuel oil varies.

Stability in rates is desirable, and where the Corporation Commission is able to prevent the dissipation and disappearance of funds a rate should be allowed that will provide sufficient surplus to tide over a lean period of short duration without changing rates

No Corporation Commission is properly functioning, or creditably serving the public, that starves public utilities through insufficient rates until their credit gets bad so that they cannot keep pace with the development of the communities which they serve.

It should not be the policy or practice of a Corporation Commission to force public utilities into the hands of receivers (as we are frequently advised to do) except in case of gross and continual mismanagement. Receivers are not as a rule noted for furnishing cheap service, and not always for economical or efficient management.

We need always to keep in mind that eternal vigilance is the price of most everything that is really worth while. We also at times need to recall the wisdom of Abe Martin who observed that

as wholesale costs declined the overheads of the retailers increased.

I imagine I hear some of you thinking, "Have you done all these things?"—No, really the millennium isn't here yet.

If you will indulge me for one moment I will call your attention to one of the little things that was done during the first year that I was a member of the Commission.

The law makes it our duty to collect an annual corporation license tax. During the five years ending June 30, 1917, the collections from this source amounted to $205,015.97 or $41,003.19 annually.

August 4, 1917, we adopted and signed a short Journal Entry construing Section 7539, Revised Laws 1910 (the section providing for the collection of this tax.) From this Journal Entry I quote:

> "Section 7539 Revised Law, 1910, shall be construed literally and in the exact terms and words in which it is written."

The principle laid down in this Journal Entry was immediately applied. Between July 1, 1917 and November 1, 1921, we collected and turned into the State Treasury, to the credit of the general revenue fund of the State, from this source, $1,128,368.17 or $225,673.63 annually, and eight months yet to finish the five years. During my term of office the collections from this source will be more than one million dollars in excess of what they were for the six preceding years.

The increased collections from this source alone will exceed the expenditures by the Commission for all purposes during my six-year term.

Returning to the Text—

The Corporation Commission's viewpoint on public utility regulation should always be the *Patron's* viewpoint—not the viewpoint of the unconcerned or disinterested, not the viewpoint of the utility owners, bond holders or employees, not any middle-ground "go-between" viewpoint, nor should it be the viewpoint of the *thoughtless, uninformed patron* who refers to what he "used to pay" (per month) as conclusive proof that rates are too high, without any knowledge of operating costs, then or now, and without any information as to whether the "used to be" rates were or were not remunerative, and without stopping to consider that a vacuum cleaner and an electric toaster have been added to the equipment since the "good old days" with which he makes his comparison.

Just as the intelligent farmer can be trusted to properly feed and care for the team that serves him, so can the intelligent,

informed patron of a public utility (one who must needs have permanent, efficient service) be trusted to properly maintain the utility by approving just rates and reasonable operating rules.

THE RESPONSIBILITIES OF A MODERN CITY GOVERNMENT*

Mayor E. B. Cockrell, Fort Worth, Texas

From the earliest times men have felt pride and responsibility in regard to their cities. The pages of history are filled with the stories of cities whose citizens served them with every power, and held themselves ready to die for their welfare. At first these cities were the only political units to which allegiance was demanded. The nation was a loose aggregation of cities. Gradually the sphere of political allegiance changed and widened; and, as we all know, in our own country today we feel a threefold loyalty, to nation, to state, and to the city or community in which each of us dwells. Under our system of government each of these units of government has its own sphere of action, its own rights, its own duties, its own responsibilities. It is upon the responsibilities of the modern city government that I wish to speak today.

Through, as we have seen, allegiance to the city and devoted service of the city are very old, and practically universal, yet they have gone hand-in-hand with a surprising amount of selfish individualism until very recent times. It is only lately that men have begun to recognize that we are all members one of another, and to realize that individualism will no longer serve as a social motive. Today we are in the era of cooperation. The rich man is no longer satisfied as to the city's cleanliness so long as his own white marble steps are kept scoured; he wants to know that the slum district is sanitary; partly because this does serve him as an individual; partly because he recognizes his duty to his fellow-citizens.

The only way in which our modern cities can meet their responsibilities is by cooperation; the cooperation of all citizens to secure good sanitary conditions, good streets, good water, good lights, good schools, good playgrounds, good libraries, good parks. This spirit of cooperation, which seems to be growing up spontaneously in so many towns, unites citizens of every class and condition. It may well be called the soul of the community. And one of the first needs of this soul is a fit dwelling place.

The community spirit of cooperation manifests itself in an interest in city planning. No longer content to live from day to day and allow individualism to build ugly dangerous structures in a haphazard manner, the town imbued with this new spirit begins

*As a complete stenographic report of Mayor Cockrell's address is unfortunately not available, a brief summary is given here.

to plan its own future, to provide for its own growth into a place where men may live well and happily.

In making and carrying out a city plan, the help of every available agency should be utilized. The relation should be particularly close between the city government and the chamber of commerce. Each can and should help the other, so that a well-governed prosperous and progressive community can be developed.

No one person can make a modern city; nor can many persons working selfishly for their own individual interests. But when the community soul is developed, when all citizens and all groups and agencies cooperate, then the modern city becomes an object of pride and happiness, and a source of benefit and prosperity to its citizens. The child in his up-to-date, well-equipped schoolhouse, the working-girl enjoying the public parks, the poor student with all the world's best thought at his command in the libraries, the artist gazing with joy upon the noble outlines of public buildings, the rich man and the poor man alike refreshing themselves with pure water, each of these will feel an ever-increasing pride and loyalty to his city, and a growing sense of responsibility in bringing it ever nearer to the ideal.

WHAT THE COMMUNITY INSTITUTES ARE DOING

J. E. McAfee, Community Counselor for Community Institute

The Community Institutes are seeking to apply the philosophy of the ancient sage who declared, "Nothing human is alien to me." They overlook no phase of human interest or concern. They aim to cultivate among all the people the complete, well-balanced, full-rounded life. If derangements in the business program breed the ailments of a particular community, those derangements are quite as definitely the concern of the community staff as is the preacher's anxiety over original sin or the educator's passion to conquer ignorance. The program of the Institutes aims to stifle arbitrary prepossessions. It faces the facts as they exist in each community. It accepts realities as the beginning and basis of progress. Cut-and-dried formulas are thus avoided. Those inspirations and methods are applied which, to the best of open-minded human intelligence, will most directly meet actual and known needs.

Covering only two days and a part of a third day, the Institute can be, and aims to be only a ground-breaker. It cracks open the nut. It starts things. It wakes up certain of those who are dead in community trespasses and sins. It implants the community idea. It clarifies the ideal of cooperation. It reveals at least glimpses of the happiness and prosperity in store for each citizen when all citizens seek first the common good. It convinces many a doubting or despairing one that when each is bent upon the good of all, all will necessarily be devoted to the good of each. The working out of this program, and the realization of the ideal is a far more intricate and protracted process than can be compassed within the crammed hours of two or three days. None can predict the end, since there will, indeed, be no end. The way is opened into avenues of perpetual progress.

Much of this progress will need intelligent and persistent guidance. Now that the Institutes have been held in twenty-seven of the Oklahoma communities, and by the end of the present season will doubtless have reached seventy-five, the continuation work is looming into first-rate importance. Plans for discharging this responsibility are gradually developing with the need. While each community must work out its own salvation with fear and trembling, it is recognized by the University as a divinely conceived mission to work in and through this community effort towards larger realizations than unaided, unguided activities can contrive. The community extension staff will not permit itself to usurp

the functions properly belonging to the self-propelled, autonomous community. Yet the enlightened citizenship of the state will surely provide the resources to carry on where the Institutes now lead in implanting community ideas and ideals.

The variety of human emphases in the Institutes is partially revealed in the bare listing of the personnel of the staff. It includes a physician and a nurse, a song and recreation leader, an educational counselor, a conselor of domestic relations, an agricultural counselor, a business counselor, and a community counselor. In addition there is an advance and collateral staff consisting of the agent who initially visits and contracts with the towns, a nurse who makes preliminary studies of health conditions, especially among the children, and a publicity agent who helps before and after each Institute to reach the people of the community and the state with reliable information relative to the Institute work.

The health department works in co-operation with the local physicians. No medicines are administered. No prescriptions are given. Most of the effort is centered upon the children. As many as four hundred have been examined in a single town. This enables parents in individual cases to gain expert and entirely disinterested counsel in the treatment of unsatisfactory physical conditions. The number and variety of examinations furnish a guide in the study of general sanitary problems. It has become perfectly apparent, for example, that enlarged and diseased tonsils prevalent among Oklahoma school children, often accompanied by adenoids and inner ear trouble, are in a large measure to be traced to dust perpetually filling the air of many towns, and to be corrected only by the most rapid and thorough possible paving of traffice ways and the parking of unused street surfaces and other vacant areas. Always and everywhere the health department is urging the installation of the county or community nurse. Where the local physicians declare themselves untrained and unequipped for surgical and other specialized medical work demanded in their towns, arrangements are being made to secure expert medical service through the University medical faculty and the staff of University hospital, always in cooperation with the local physicians.

Under a highly qualified song and recreation leader the Institute demonstrates the value of supervised play and concerted community singing. School boards are urged to employ expert supervisors in this department, it being believed that an educational program which omits to guide the young in their play life is as recreant to its trust as would be a system devoid of teachers qualified and charged with directing the intellectual development of the

child. Moral conditions now prevalent among high school students make this so apparent that none can long fail to heed.

The idea of a recreation program for the whole life of the community, is taking hold with marked promise. The proper use of leisure time is the vital concern of old and young, of the educator, of the criminal judge, of the society leader, of the minister of religion, of the man of affairs and of every community builder. It is as true as it is poetical that "music hath charms to soothe the savage breast," and a well-organized program of community singing and instrumental art, including the largest possible number of active participants, furnishes a humanizing and refining influence of the first order. It is recognized also that the richest physical culture and the highest joy and efficiency in sport demand depopulating the bleachers and peopling the play ground, reducing the number of those whose sport is confined to rah-rahs and hat-waving and the throwing of pop-bottles at the umpire and the multiplying of those who themselves run the race and play the game.

The perils which threaten the American home are bravely faced. Various phases of the relations of the husband and wife and of the parent and child are treated directly and practically in the Institute program. A civilization based upon the home is recognized to be in serious peril when divorces, in many regions, and in several counties of this state, mount to percentages of thirty, fifty, eighty and even higher, with relation to marriages.

The whole emphasis of the Institute is educational, in the broad sense of the term. In the narrow or technical sense, the central place of the school is recognized. A large proportion of the effort of the staff is expended among the school pupils. They lead in the community singing, and in the play life. Numerous topics vital in their experience are discussed with them. Many features of the program are intended to be specially helpful to teachers. It is a growing custom among county superintendents to arrange for the attendance of the teachers from the rural schools, as many as a hundred and fifty having been thus officially called into certain county seat towns where and when Institutes have been held.

In the broader sense of the word the Institute aims to reach the whole adult life with educational influences. Our child-centered culture is leaving great regions barren in our society. The dearth of libraries is a veritable scourge in Oklahoma. The Library Commission reports but 130 libraries in the entire state, and half of the counties are without even one. This furnishes a rough but fairly accurate index of the state of adult culture. Army tests

have prompted the estimate that the average intelligence of the American voter is that of the thirteen or fourteen year old child. It goes without saying that the institutions of democracy are not safely entrusted to the sovereignty of a thirteen- or fourteen-year-old intelligence wielding the powers and passions of the full-grown adult. Adult education must be recognized as an issue second to none in our social economy. Schools for the young are not the sufficient answer, partly because the adult is now in control of our social organization and the solution of our social problems cannot be delayed until the oncoming generation takes over this control, and partly because an educational system which exhausts its energies with the culture merely of the child intelligence will duplicate in the future the muddling of the present. An educational program which surrenders its office when once a fourteen-year-old, or an eighteen-year-old has passed from its tutelage has condemned a civilization to stick at a fourteen- or eighteen-year-old intelligence. Our democracy cannot succeed on that basis. The adult population must attain an adult mental capacity. Education must be made an affair of the whole life, of all the population and of all ages. It must begin with the cradle and end only with the grave. The whole community movement is a recognition of this demand. Without an expanding adult mind a progressive or even a continuing democratic civilization would seem a vain hope.

The chief agricultural concern of the Institute is the establishment of true relations between town and country, and the raising of social standards in rural communities. Through the active co-operation of the county agent, and the occasional presence with the staff of a representative of the A. & M. College, technical discussion of farming methods has been sometimes included. But rural sociology and especially the partnership of the farmer and the townsman in the one community life are always matters of eager concern in the Institute program.

Similar remark may be made of the functions of the business counselor. He acts as adviser to any merchant who is working on a knotty problem of administration in his own business, and all are encouraged to use his services freely in this way. But the supreme commercial emphasis of the Institute is upon organizing business and all economic interests on such a basis as to serve most efficiently the common life. The responsibility of commercial clubs and chambers of commerce for the whole life of the town is constantly magnified, and methods of increasing the efficiency of this service are strongly urged. The notable success of the Institute in this field is to be credited largely to the loyal and generous sup-

port of the Chamber of Commerce of Oklahoma City, and more limitedly to that of Tulsa. They have furnished without cost the business counselors. The high character of the gentlemen who have thus served, their recognized ability in their particular fields of business enterprise, their comradery in staff work, and quick sympathy with the aims and intent of the movement, have been a powerful influence in reaching the business resources in the interests of the higher community life which the Institutes strive to cultivate.

Beyond the range of all these there lies the wide field of civic and social activities and their institutions. None of them is foreign to the purpose and beyond the reach of the Institute program. It is perfectly clear that numerous communities condemn all their other social institutions to comparative impotence so long as their civil organization is in its present broken-down condition, or so long as the public utilities are operated after a fashion which would bring any private concern into abject bankruptcy. Here emerge questions of peculiar significance to the body of public administrators, I am now addressing.

Universities have generally accumulated vast stores of social values, and their administrators are now pushing extension measures in the belief that these stores belong to all the people whose support makes the University possible. The University thus seeks to be true to its name, and aims at a universal service. A member of the late cabinet at Washington on one occasion remarked that the federal government is 98 per cent efficient through its numerous boards and commissions and bureaus in the assembling of useful knowledge, but it is only 2 per cent efficient in getting that knowledge across to the people in whose service it has been assembled and who are supposed to be benefited by it. A somewhat similar remark might be made of the average university though the percentages mentioned might not hold. The learning accumulated at the university seat is of such volume as to insure a veritable social regeneration, if only it could find means of practical application to the communities in whose interest it has been accumulated, and whose financial and moral support alone make the university possible. It is the effort to give these values back to the people who have created them, which is embodied in these community institutes and other extension measures adopted by the Oklahoma University.

The phenomenal response from the communities so far served is the most conclusive evidence that the effort is very much worth while and is making in the right direction. The grateful and heartfelt expressions from all ranks of the citizenship, and the vigorous manner in which the people are taking hold of their community

problems is exceedingly gratifying testimony to the fact that the Institutes are accomplishing in at least some measure the high purposes in which they were conceived. There is left behind in each town or city a Community Council composed of a representative body of citizens, chosen because they can think and feel and speak for all shades of sentiment and each social group. These are putting new life and confidence into all community organizations and activities. They keep the University and each other in constant touch with the best methods developing everywhere. They enable each community to serve and be served by all the others, and are thus building up a social sense which will help to bring the entire state to a consciousness of itself as one community.

During the remaining moments assigned me I ask the privilege of laying before this body the outstanding civic problem which the Institutes so far held have brought to light.

I raise the question, Cannot some way be found to help the small town to conduct its civic affairs and its public utilities efficiently? The state laws permit the manager form of government to apply only to populations of 2,000 or more. The civic affairs of communities smaller than that number are usually in a pitiful condition. The statutory provision of three trustees is ordinarily converted into an indifferent imitation of the mayor-council plan. A semblance of power is used to clothe these officers with a deceiving dignity, but the town's civic affairs are so hopelessly at the mercy of the arbitrary acts of the county administration that an experience of one term in office is often enough to stifle the faintest ambition of the more capable citizens to serve the community. The civil administration is some times scarcely nominal. Public affairs simply drift along, or at best move by very infrequent spurts when some outraged individual of spirit and ability takes hold to do a little toward setting affairs to rights. Successive councils or groups of trustees pass ordinances which are speedily forgotten and even the official record lost. There are probably large numbers of these towns in which no authentic copy of the ordinances could today be found high or low. In one, the "city clerk" is elected openly by his solicitation and by the confession of the citizens for the sake of insuring him the ten dollars a month which accompany the office. He cannot make an estimate. He cannot even keep the minutes of the meetings of the trustees. He connot do anything that a city clerk is supposed to do. The whole administration thus falls into these slipshod ways, and any attempt to reorder them on efficient business lines soon becomes so entangled in the masses of the state statutes, vesting powers and responsibilities in the county,

that despair or sodden indifference prevails quite generally.

Cannot the way be cleared, if nothing better can be devised, for the chamber of commerce or other voluntary organization in these towns adequately to finance an administration which shall take over the civic affairs, including water, light and other public utilities, and conduct them upon a basis which the rank and file of the citizens really desire, and would be willing to pay for? The common business of a village of 1,500, or of 1,000 or even 500 people, is of such volume and importance as entirely to justify the employment of competent management, at a compensation adequate to command the best. One and another of these villages or towns would order their affairs to this purpose if they could kick themselves loose from the tangle of statutes superimposed by arbitrary law-making bodies on up the line. The number of things which a population cannot do under state law and county administration fills a large volume. We are encouraging, indeed we are compelling, community shiftlessness and looseness by apparently entirely needless restrictions laid from above upon these aspiring communities.

It would seem that towns and cities conducting their own public utilities are compelled under the laws to go into a kind of bankruptcy every ten or twenty years. The machinery by which water, light and other public conveniences and necessities are supplied, falls hopelessly out of repair or grows prohibitively expensive by becoming obselete in a short period. This is perfectly well known, and private industrial enterprises provide for the inevitable rehabilitation by accumulating sinking or deterioration funds. This seems impossible under laws controlling the conduct of the public business. A business administration installed by an uprising of the citizens in a certain town, sees this necessity of providing for the future, but is so far unable to devise a scheme of finance which will get by the excise board and provide out of rates a fund for the rebuilding of their water and light plant ten years hence. The only course open till the end of time appears to be to do at regular intervals, what they are compelled to do just now, namely, declare a virtual bankruptcy and go the citiezns for a new bond issue of a hundred or a hundred and fifty thousand dollars to replace and bring up to date their broken-down equipment.

These are problems, I am conscious, not foreign to the municipalities represented in this body. But perhaps few of those here appreciate the despair of the aspiring citizen of the small town or village in the midst of his hampering tangle of overhead laws. Yet this body should be keenly sympathetic. The larger towns and cities

here represented are receiving recruits to their citizenship in a perpetual stream from these small towns and villages. For the most part these are raw recruits indeed. They have the very least experience in the efficient conduct of civic affairs. They can scarcely gain such experience, even when they aspire. Yet these small centers of population are our most valuable laboratories for the working out of civic method, and the cultivation of the civic spirit. It seems a distressing waste of social values that we do not actively encourage their utilization. So far from doing so, we positively discourage them by such restrictive and inhibitive statutes that their use as training centers in efficient citizenship is practically impossible.

In the higher reaches of government we have had bitter experience of hampering checks and balances. Becoming overeager to keep the evil from doing mischief we succeed in hindering the virtuous and high-minded from achieving any good. The community movement calls aloud for a fuller trust in the people to order their ways. The mistakes they may make in the exercise of this truer liberty will be so inconsequential in comparison with their positive and constructive achievements in community building, that they can be overlooked. In the present situation we are forced to the employment of cumbersome voluntary organizations to express even the seasoned and universal desires of our aspiring citizenship. Often the first and foremost concern of progressive citizens is that of getting around or climbing over the civil or legal devices by which the common welfare is supposed to be guarded. We certainly are missing the mark when we make official government an offense and the foremost hindrance to enlightened social progress. If there are elements in the population who can be trusted to order their affairs conscientiously and intelligently it would seem to be precisely the residents of these small communities where every item of public service strikes directly home, and is made the homely concern of each and all. Yet this is under present restrictions our least promising laboratory in the training of citizenship. We trust these least of all. We tie them up so tight in bundles of overhead legalities that for the most part they do not even struggle. The small town and the village will set the pace, not lag hopelessly behind, in constructive citizenship, if we will only give them the chance.

Our Community Institute movement has touched enough of this zone of life to reveal that much.

It should be the craving desire and the indefatigable effort of all who are laboring in the social field to make our civil machinery

effective in the widest social service, in the state, in the municipality, and not less in the small community. Our common interests should be efficiently administered, and on a scale as large as the common interests extend, under the auspices of our civil system. Depending upon voluntary agencies to function in the fields of universal need is a lumbering and excessively expensive method. Our citizens should turn naturally and confidently to the public administration for the conduct of their common affairs. Tax money is the cheapest and best money any citizen invests, and he has a right to utilize the machinery installed by this investment to the limit of the common need. Public utilities multiply and enlarge with each new step in social progress. Efficient management is the best democracy, and the people want it. They will devise the means and employ the men, and pay them adequately, if we will strip off this suffocating envelope of outworn statutes, and checks and balances in government, and hampering overhead administration which now too commonly leaves our aspiring citizenship in despair.

The staff now employed devote their entire time to the Institutes, following an exceedingly strenuous program of travel. It is estimated that ten years will be required, at the present rate, for this force to cover the communities of the state but once. The large proportion of towns already visited who have put in claims for return Institutes complicates the problem of meeting the growing demand for this service. There is throughout the state rising community spirit which, especially if taken at its flood, will carry Oklahoma to levels of social achievement not conceived as possible, except by those who are watching and entering into this movement

MUNICIPAL ACCOUNTING

Arthur Jones, C. P. A., of the firm of
Riggins, Beck & Jones, Certified Public Accountants

Twenty years ago there was no city in this country whose financial records and public accounts had been so systematized as to furnish the information needed for administrative judgment and proper control. Since that time, however, progress in this field has been rapid and many cities have installed uniform systems of accounts based on broad and comprehensive lines, with uniform systems of account classification by means of which comparisons are possible, thereby affording a standard of administrative efficiency.

One of the ends to be reached by any system of accounts is to locate responsibility for waste, inefficiency and infidelity; another is to make and preserve the evidence of efficiency and proper regard for the duties and responsibilities of office.

In the discussion of Municipal Accounting Systems, the following questions present themselves:

(1) What methods of keeping a city's books will best reflect the efficiency of an administration?

(2) What standards of economies in operation and management can be created on the basis of Municipal Reports?

(3) What practical methods of preventing loss and waste can be learned from a city's books and records?

The answer to these questions is, of course, the adoption by all cities who are members of the Oklahoma Municipal League of a uniform system of accounts and records, using the same terminology and classification; so that intelligent comparisons may be made. To do this, a lot of real, old hard work will be required. It will be necessary for this association to appoint a committee who will work—and work hard—in the preparation of such a uniform system of accounting.

Naturally, the first criticism of this suggestion will be that the detailed accounting methods applicable to large cities are not necessary for the smaller ones. Very proper—they are not; but it will be found that if a proper system be devised, the forms and methods can readily be adapted to the use of the smaller cities, whereby much detail is eliminated, yet the important facts for comparison be retained.

Most of the Oklahoma Cities and Towns manage to keep some kind of a Cash Account and some kind of an Appropriation Account, and that is about all. Just enough to keep them out of jail, and

not enough to give themselves or anybody else any real information concerning the fiscal or other affairs of the town or city.

How many of you keep "Capital" accounts, as distinguished from "Current" Accounts? I mean by that the distinction between accounts pertaining to construction or investment, and accounts pertaining to the operation of the various departments of city government. How many of you have an inventory of all of the property of every kind, owned by your city? I know many of you who have not, and yet, it is one of the most important matters I can think of in connection with your work. The answer: "I've been 'getting by' without it."

How many of you realize that it is more important to keep a "Revenue and Expense Account" than it is to keep a "Cash Account?" You know, of course, that the "revenue" applicable to any fiscal year, bears little relationship to the "cash" collected during that fiscal year. Much of the cash collected may have been applicable to the revenue of some other fiscal year; and likewise, the "expenditures" applicable to any fiscal year bear little relationship to the "cash disbursed"—most of it may have been disbursed in paying off obligations of other fiscal year "expenditures."

There is just one other important matter I wish to touch upon, and then we will have a little "free for all" discussion upon the particular problems nearest the hearts of some of you. How many of you, in keeping your Appropriation Accounts, encumber those accounts with orders given or contracts let, before claims for such orders or contracts are filed or allowed? It is not right, and we all know that it is not, to give a salesman an order or to hire some one to perform labor, when there are already obligations incurred more than sufficient to take up the entire appropriation. Most of you just "trust to luck" and let them take judgments if they over-run the appropriation, don't you? Now then, why don't you put an "encumbrance" on your appropriation, when an order is given or labor arranged for? It is not hard to do, and it saves lots of grief

(DISCUSSION)

RECENT COURT DECISIONS AFFECTING CITIES

By A. O. Harrison, City Attorney, Bartlesville

In a brief consideration of recent judicial decisions affecting cities, the discussion will be limited to Oklahoma cases, for two reasons, first, the number and character of such decisions is sufficient to occupy the time alloted, and second, the Oklahoma Law on municipalities, in some respects, is different from the law in any other state. The statutes of Oklahoma confer upon cities and towns generally large powers of local self-government, but our constitution confers upon cities of over two thousand population the power to adopt their own charter, subject to the approval of the Governor, and in so doing, these charter cities are clothed with larger powers probably than the cities of any other State in the Union. And yet, there are limitations to these powers which our courts are rapidly defining, some of these recent decisions are of peculiar interest.

It was held in City of Bartlesville vs. Corporation Commission, 199 Pac. 396, that the Corporation Commission has exclusive jurisdiction to regulate rates of public utilities, nothwithstanding, the fact that a local city charter confers this power upon the city. The court held that the fixing of utility rates is a legislative act and the state has a soverign interest in this subject of legislation, and having conferred this power upon the Corporation Commission, the cities of the State are precluded from entering this field by charter provisions or otherwise. In this connection the court further held that since neither the Statutes or the Constitution provide for notice to a city of a proceeding to increase rates, that a city would not be heard to complain if the Commission proceeded arbitrarily to increase such rates without notice, or rather without such notice as would enable the city to prepare for such hearing. The Court further held in that case, that the Coporation Commission had the power to fix temporary rates of public utilities without first ascertaining the value of the property used in such services.

In the City of Cushing vs. Luke, 199 Pac. 578, the Supreme Court of Oklahoma held that a municipal corporation is liable in damages for discharging sewage into a river or creek, thereby polluting the water of the stream, causing it to become foul and impregnated with poisonous substances, rendering it unfit for domestic or other uses, and thereby creating and maintaing a nuisance, which is detrimental to the health, comfort and repose of a lower riparian owner.

In Atlas Life Insurance Company vs. the Board of Education of the City of Tulsa, 200 Pac. 171, the Supreme Court held that a municipal corporation possesses the incidental or implied right to alienate or dispose of the property, real or personal, of the corporation of a private nature, unless restrained by charter or statute; and in this connection, held that the Board of Education of the City of Tulsa, had the power to lease for ninety-nine years, to a private corporation for private purposes, grounds held by the Board which were no longer suitable or needed for school purposes.

A similar question recently arose in the City of Bartlesville, as to whether the city had the power to construct in its proposed Three Hundred Thousand Dollar Convention Hall, store rooms or office space, to be rented out for the purpose of raising revenue to maintain the building. A committee of the Washington County Bar Association investigated the subject and held that the city had no such power, but might rent out the auditorium, banquet room, or other parts of said building for temporary uses to private parties when not needed for public purposes. There would seem to be no inconsistency between the Tulsa case and conclusions of the above committee, for the reason that it is one thing to lease public property, not needed temporarily or no longer needed for public purpose, and quite another to purchase or construct property with public money for the avowed purpose of leasing the whole or any part thereof for revenue.

In the case of Oliver et al, vs. Pickett, 193 Pac. 526, the Supreme Court held that the City Commissioners have the right to judge of the necessity of public improvements, and their finding of such necessity is conclusive, and that street improvements are purely municipal matters concerning which a charter provision will supersede the general statutes of the state.

In the case of Carroll et al. vs. State ex rel Moiser et al, 80 Okl. 89, 194 Pac. 219, the Supreme Court held that where an election is held to amend a city charter, and where such amendment receives the majority vote of the qualified electors, the duty of the Board of City Commissioners to certify such amendments to the Governor being purely ministerial, such board, when the election returns are regular upon their face, cannot question the validity of the election or of the amendments proposed, and that mandamus will lie to compel said commissioners to certify such amendments to the Governor for his approval.

In the case of In Re Habeas Corpus of Andy Bochmann, No. A-4082, handed down October 29, 1921, not yet officially reported, the Criminal Court of Appeals held that a municipal court in Ok-

ahoma is a constitutional court; and, as such, is bound by the Constitutional Provision in Section 17 of the Bill of Rights; and held that all prosecutions in the police court should be maintained upon a verified written complaint, and that part of Section 650 R. L. 1910, provides that: "A complaint when made by a policeman against any person arrested without process need not be in writing," is in conflict with said Section 17 of the Bill of Rights, and that all complaints in the police court must be in writing and duly verified.

It has been the tendency of the Criminal Court of Appeals to limit the power of police courts in the summary trial and punishment of offenders. In the case of Ex Parte Johnson, 161 Pac. 1097 that court held that a person prosecuted under a city ordinance, for an offense which is also made a misdemeanor by statute or ordinance the punishment for the violation of which is or may be imprisonment, is entitled to a jury trial in the court of original jurisdiction, and to accord to the accused the right to be tried by a jury in the County Court on appeal after conviction in the municipal court, does not meet the requirements of the constitution.

In the case of In Re Munroe, 162 Pac. 233, that same court held as follows:

> "Under the Bill of Rights, Sec. 20, the accused in all criminal prosecutions has the right to a trial by "an impartial jury of the county, in which the crime shall have been committed." It is therefore apparent that it was never contemplated by our legal system, that police courts should try criminal matters, but only quasi criminal matters, since no provision is made by which a jury "of the county" may be impaneled in such courts. The framers of the Constitution specifically made it possible for justices of the peace to impanel a jury "of the county," by making their jurisdiction coextensive with the county. They have all the county to draw from, and can draw from all of it, or any part they see fit; but we know of no provision extending the jurisdiction of a police court beyond the corporate limits."
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> This, we think, was not accidental or an oversight, but was intended by the framers of the Constitution to, as far as possible, insure to the accused the kind of jury designated, namely, "an impartial jury," and to hedge against the professional juror who would naturally become a "hanger on" around a police court, to draw his pay and do the behests of the presiding judge of that tribunal, and thus defeat the very purpose for which the jury system was called into existence."
>
> "From every angle and viewpoint it is clear that police courts can only try that class or grade of offenses called petty offenses, which, according to the common law, may be proceeded against summarily in any tribunal legally constituted for that purpose. And, however convenient it may appear to permit them to try without a jury criminal of-

> fenses, in the language of Blackstone, 'let it be remembered that these inroads upon the sacred bulwarks of the nation are fundamentally opposite to the spirit of our Constitution, and that, though begun in trifles, the precedent may gradually increase and spread to the utter disuse of juries in question of the most momentous concern.'"

Shortly after these two opinions were handed down the Legislature of Oklahoma provided, in S. L. 1917, P. 109, that: "In the trial of all cases in said municipal court, where the offense, as defined by the city ordinance, is punishable by a fine only, the defendant shall be tried without a jury; but in all cases where the defendant is charged with the violation of a city ordinance, and where the said offense may be punishable by imprisonment, the defendant shall be entitled to a trial by a jury in the justice of the peace court within said city."

After this act of the Legislature was past, the Criminal Court of Appeals affirmed their holding in the Johnson case, in the cases of Ex Parte Doza, 164 Pac. 130; Ex Parte Gownlock, 164 Pac. 130; and Franks vs. City of Muskogee, 171 Pac. 492, and in those cases made no reference to the Act of the Legislature of 1917.

In the case of In Re Habeas Corpus of William Johnson, No. A-4070, handed down October 29th, 1921, not yet officially reported, that same court held that a person charged with the violation of a city ordinance, where the punishment is or may be imprisonment, or a fine and costs in excess of Twenty Dollars with or without imprisonment, is entitled to a trial by jury, and that a municipal court in this state may summarily and without a jury, impose a fine and costs not in excess of Twenty Dollars, and may imprison the accused for the payment of such penalty, but not otherwise. A similar holding was made in the Bochmann case. Supra.

The power of a city to prohibit certain Sunday activities was upheld in this same case notwithstanding the fact that such activities were not prohibited by any statute of the State. The ordinance under consideration was one prohibiting the operation of Moving Picture Shows on Sunday, and the holding of the court was that the city had the power to prohibit Sunday Moving Picture Shows, though it had been held in the case of State vs. Smith, 198 Pac. 879, that the State law did not prohibit the operation of moving picture shows on Sunday. In this case, the court held that a municipality may move in the same direction as the legislature, but not contrary to, nor in the opposite direction. This decision is of far-reaching importance to the cities of Oklahoma, for since the

decision in the Smith case, Supra, was handed down, there is very little protection by statute of a Sabbath Day in Oklahoma.

The Oklahoma Statute, Sec. 2405, as amended by S. L. 1913, P 456, prohibits all servile labor on Sunday, except works of necessity or charity. Under the construction of that statute by Judge Brett, in Krieger et al vs. State, 160 Pac. 36, the word "servile" was eliminated from the statute as "obsolete and meaningless" but the present court in the Smith case resurrects that obsolete and meaningless word, and puts it back in the statute.

Under the construction of the law in the Smith case, fully three-fourths of the regular week-day activities of a City may proceed seven days in the week unhampered by any law of the State. Under the recent construction only heavy manual labor is barred on Sunday. Under that decision the ditch-digger will have to stop on Sunday, but the banker, the bookkeeper, the business college, the clearing house, the real estate man, the moving picture show man, the theater man, the pool hall man, the professional man, and all clerical and business offices and institutions may run without let or hindrance on the Sabbath day. The remnant of our Sabbath laws that now remain, would seem to be discriminatory and class legislation, and will doubtless be tolerated no longer by the people of Oklahoma than it takes the Legislature to meet and organize for business. The only relief the people of the State can have at present, is the power reserved to the cities, as held in the William Johnson case, to enact local ordinances controlling these matters. It is not at all likely that the good people of the State of Oklahoma will be content to remain at the rear of the column of those states which seek to protect the Sabbath Day by law, the one acid test which makes the distinction between the savage and the civilized state.

NUISANCES AND ABATEMENT THEREOF

Leroy J. Burt, City Attorney, Sapulpa

This is a subject of vital importance to municipal officers and citizens generally, throughout the State of Oklahoma, and particularly so in the towns and cities of the State. I shall endeavor to treat this subject more particularly as it applies to towns and cities and with reference particularly to the abatement of nuisances.

The term or word nuisance is derived from a French word which means to injure, hurt or harm. Blackstone defines a nuisance as "anything done to the hurt or annoyance of the land, tenements, hereditaments of another." We must have a more comprehensive definition, however, to meet the conditions of the present day. The decisions establish that the term "nuisance" in legal parlance extends to everything that endangers life or health, gives offense to the senses, violates the laws of decency, or obstructs the reasonable or comfortable use of property.

Wood in his work on nuisances gives this definition "that class of wrongs that arises from the unreasonable, unwarranted, or unlawful use by a person of his own property, either real or personal, or from his own improper, indecent or unlawful personal conduct, working an obstruction of or to the right of another or of the public, and producing such material annoyance, inconvenience, discomfort, or hurt that the law will presume a consequent damage."

Nuisances are divided into private and public and one writer gives a third classification which he terms "mixed nuisances.",

A private nuisance is anything done to the hurt or annoyance of the lands, tenements or hereditaments of another. It produces damage to but one or a few persons and cannot be said to be public.

A public or common nuisance is such an inconvenience or troublesome offense as annoys the whole community in general and not merely some particular person. It produces no special injury to one more than another of the public.

A mixed nuisance is one which, while producing injury to the public at large, does some special damage to some individual or class of individuals. But this classification is seldom used.

We have a statute in this State which defines nuisance, being Sec. 4250, Revised Laws of Oklahoma, 1910, to-wit:

> "A nuisance consists in unlawfully doing an act, or omitting to perform a duty, which act or omission either:
>
> First: Annoys, injuries or endangers the comfort, repose, health or safety of others; or,

Second: Offends decency; or,

Third: Unlawfully interferes with, obstructs or tends to obstruct, or renders dangerous for passage, any lake or navigable river, stream, or highway; or,

Fourth: In any way renders other persons insecure in life, or in the use of property."

Further our Statute also defines both public and private nuisances. See Secs. 4251 and 4252:

"Public Nuisance. A public nuisance is one which affects at the same time an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon the individuals may be unequal."

"Private Nuisance. Every nuisance not included in the definition of the last section is private."

Location has a great deal to do in determining whether a thing or an occupation or business is a nuisance. A thing might be a nuisance in one place and not in another, depending on location, surroundings, etc. A slaughter house might be a nuisance in one place and not in another. A trade or business which produces loud noise or offensive smells or large volumes of smoke or that produces noxious or offensive gases, like a smelter, would be a nuisance in some localities and not in others, depending entirely upon the surroundings.

Also the degree of care with which a business is operated or carried on ofttimes fixes the question of whether the business is or is not a nuisance. Some trades or business can be carried on if properly conducted and not be a nuisance in any locality, while on the other hand, if neglected, may become a nuisance. For example, a livery stable is not a nuisance in itself, but if improperly conducted might become a nuisance. Also a dairy where large numbers of cows are kept for the production of milk is not a nuisance in itself but may become so if allowed to become foul and filthy.

So the determination of the questions of what is or amounts to a nuisance is largely a question of fact. Whether or not the business or occupation as carried on is or its not an injury or hurt to one or more people or their property interests. Some nuisances are declared to be nuisances per se and by that is meant that they are always a nuisance wherever conducted or carried on in close proximity to the residence or property of another.

Anything kept or operated in violation of law, or that is, because of its nature, dangerous, or because of its location injurious to the public, is in itself a nuisance. For instance a gambling house, a place where intoxicating liquors are sold, a bawdy house, kept and maintained in violation of law, or a dangerous object or thing like a vicious dog, an old building, which is liable to fall

and injure life or property, or obstructions in the street are all nuisances per se. Our own Supreme Court has passed upon several cases of nuisances, to-wit:

In the case of Weaver vs. Kuckler, 17 Okla. 189, the Court held that a slaughter house is not a nuisance per se and that it could be operated so as not to be a nuisance, but if improperly operated would become a nuisance. That case was not brought under a special statute which made a slaughter house a nuisance per se if operated within one-half mile of any tract of land platted into lots and blocks for residence purposes, but was brought under the general statute on nuisances.

In the case of Duncan Elec. Light & Ice Co., vs. City of Duncan, 64 Okla. 211, it was held that certain poles were unsafe and unfit to be used to carry secondary wires for furnishing current for commercial purposes and that the City had the right to declare them a nuisance and remove them.

In the case of Kenyon vs. Edmondson, 80 Okla. 3, the Court held that a dessicating plant that corrupts the air by odors and stenches to the extent of interfering with the ordinary comforts of human existence, constitutes a nuisance.

In the case of Cummings vs. Lobsitz, 42 Okla. 704, the Court held that a building which had become unsafe constituted a nuisance.

In Balch vs. State ex rel Grigsby, County Attorney, 164, Pac 776, and Greggs et al vs. State ex rel County Attorney, 175 Pac. 201, the place where liquors are sold in violation of law, where cigarettes are sold to minors, where lewd and lascivious persons congregate for immoral purposes, are public nuisances.

Statutory Remedies Against Public Nuisances

See Code 4237. The remedies against a public nuisance are

(1) indictment or information,

(2) a civil action,

(3) abatement.

Under the first subdivision above set out that of proceeding by indictment of information our Statutes, Sec. 2517, provide "any person who maintains or commits any public nuisance, the punishment for which is not otherwise prescribed, or who wilfully omits to perform any legal duty relating to the removal of a public nuisance, is guilty of a misdemeanor." Any turf exchanges or gambling houses are nuisances per se and those conducting same are punishable under this section.

See James et al vs. State, 4 Okla. Crim. 587. In other words

one maintaining a nuisance in violation of law may be proceeded against in a criminal action by indictment or information and if found guilty may be puished as for misdemeanor.

Under the second subdivision, a civil action may be maintained on relation of the County Attorney or Attorney General in a Court of Equity to enjoin the maintenance of a nuisance, but a City cannot maintain such an action on relation of the City Attorney unless expressly provided for by City Charter. See Sec 4881, Okla. Statutes, 1910: "An injunction may be granted in the name of the State to enjoin and suppress the keeping and maintaining of a common nuisance. The power therefore shall be verified by the County Attorney of the proper county, or by the Attorney General, upon information and belief, and no bond shall be required, but the County shall, in all other respects be liable as other plaintiffs." One of the earliest cases in this State is that of Reaves & Reaves vs. Territory of Oklahoma, 13 Okla. 397. This was a case brought to enjoin the operation of a public nuisance, to-wit: a disorderly and disreputable theatre in the City of Guthrie. Injunction was allowed by the lower Court and affirmed in the Supreme Court.

In the case of Billings Hotel Co., vs. City of Enid, 53 Okla. 4, the City Attorney of Enid filed a petition to enjoin the Billings Hotel Co., from maintaining a place within the corporate limits where intoxicating liquors were sold, on the ground that the same was a nuisance as defined by an ordinance of the City. In that case the Court held that the City Attorney could not bring the action in a Court of Equity for the reason that the City's charter contained no grant of power authorizing the City to restrain a nuisance within its borders. If the Charter had contained such a provision, then the action would have been properly brought, and where city charters contain no such provision the action to abate a nuisance in a Court of Equity must be brought on relation of the County Attorney of the proper County or the Attorney General of the State of Oklahoma.

A civil action may be maintained by a private person to abate a public nuisance if it is specially injurious to himself, but not otherwise. Oklahoma Statute 4259, McKay vs. City of Enid, 26 Okla. 275.

Oklahoma Statute 4260: "A public nuisance may be abated by any public body or officer authorized thereto by law." See Duncan Elec. Light & Ice Co., vs. City of Duncan, supra.

I come now to the authority or municipal corporations generally to pass ordinances declaratory of nuisances and the authority of

governing bodies to summarily abate a nuisance.

"In reviewing the ordinances of municipal corporations the Courts proceed upon a much stricter rule than that governing their decisions in the case of enactments of the general legislature. It is said ordinarily that municipal bodies cannot by ordinance declare that to be a nuisance which, according to the standards of the courts, is not such in fact; and in numerous instances municipal regulations of this character have been held invalid. But it is generally conceded that the legislature may lawfully delegate to municipal corporations, to be exercised within their corporate boundaries the power to declare what shall constitute a nuisance and to prevent the same; and ordinances adopted pursuant thereto are usually sustained. Such a grant of power, it is held, authorizes the municipality to declare anything a nuisance which is so per se, or which by reason of its location, management or use, or of local conditions and surroundings may or does become such within the common law or statutory definition of a nuisance. And where a thing may or may not be a nuisance, depending on its location, management or use, and the conditions existing in the municipality, thus requiring judgment and discretion in determining the matter, the determination of the question by the municipality is held to be conclusive on the courts." See 20 R. C. L. 389.

"The police power of the State extends to everything necessary or essential to the due and ample protection of the public morals and the maintenance of the peace and quiet of the State as well as to the protection of life and property; and in the exercise of that power the State may authorize its executive officers summarily to abate and destroy nuisances and those things specifically designed and prepared for the commission of crime, without notice, process, or any judicial form." See 20 R. C. L. 487

Under section 572, Statutes of Oklahoma 1910.

"The mayor and council shall have the care, management and control of the city and its finances, and shall have power to enact, ordain, alter, modify or repeal any and all ordinances not repugnant to the laws of the United States and the Constitution and Laws of this State, as they shall deem expedient and for the good government of the city, the preservation of the peace and good order, the suppression of vice and immorality, and the benefit of trade and commerce, and the health of the inhabitants thereof, and such ordinances, rules and regulations as may be necessary to carry such power into effect."

And under the fourth subdivision of Sec. 680, Statutes of Oklahoma, 1910, the mayor and council have power,

"To declare what shall constitute a nuisance and to prevent, abate and remove the same and take such other measures for the preservation of the public health as they shall deem necessary." It can thus be seen that the cities and towns have ample authority to pass the necessary ordinances declaring what shall constitute a nuisance and providing for summarily abating same.

Judge Owen, who wrote the opinion in the Duncan case, supra, said: "That cities have the power to declare and abate nuisances in this state is no longer an open question. * * * Sec. 594, Revised Laws of 1910 authorizes the city council to prevent and abate nuisances." Again in said opinion is this language: "The Criminal Court of Appeals, in a well considered opinion by Judge Richardson in the case of in re Jones, after reviewing a number of authorities, held that municipal corporations in this State have the power to declare what shall constitute a nuisance and the power to prevent the same; that under such a delegation of power a municipality may declare anything a nuisance which is so per se or which by reason of its location, or on account of local conditions or surroundings may or does become a nuisance within the common law or statutory definition thereof, and that a determination of the question by the municipality through its legislative body, is, under such a grant of power, conclusive upon the courts." 4 Okla. Crim. 74.

Ordinances can and should be adopted by municipalities making it unlawful for any person to maintain a public nuisance within the corporate limits and fixing a penalty for a violation of the ordinance or of any of its provisions and such ordinance should provide that each day such nuisance is maintained shall constitute a separate offense. In that way cities can very effectively handle the question of public nuisances through their own courts and it will not be necessary to resort to long and tedious litigation in other courts. In such matters the legislative branch of the municipality should not act arbitrarily, but should use discretion to the end only that the public shall be protected in matters of health and the enjoyment of their property rights. The purpose of the law is not to destroy property but to make its use such that it will not be injurious to public health or the property rights of others and whenever it is possible to eliminate or change or modify or control the conduct or operation of any business so as to make it comply with the law and not be injurious to public health or the property rights of others, this should be done.

THE TRAINING OF CITY MANAGERS

F. F. Blachly, Department of Government,
University of Oklahoma

If the city manager movement is to develop and retain the confidence of the people two things must take place:

1. Managers must be so trained by education and experience that they can perform their duties with a high degree of success.

2. City commissions must very generally choose men who have had education and experience. Without these two prime requisites the manager movement will not attain the place in our country that it should. But these two things run hand in hand. It is quite impossible to secure one alone. If commissions generally choose as manager a man who has no particular qualifications for the position, with no training and no experience, men cannot afford to take years of hard training to become professional managers. On the other hand, if city commissions are unable to secure trained and experienced managers, the position of manager will soon become the spoil for petty politicians. If this happens the manager movement is doomed, for with a mere local petty politician as manager the city will be in little better shape than it was before. People will demand a return to some of the older forms of government. Unless I am mistaken, the whole success of the manager movement depends upon developing the managership into a profession quite as well recognized as is medicine, law, accounting or engineering. No sane man would think of hiring a doctor or a lawyer simply because he was a good fellow, or because he was in need of a job. We must get to the point where no sane city will think of hiring a manager unless he has had training comparable to that of a doctor or a lawyer.

But it may be said, a city manager is an administrator, and administrators are born and not made by education. To this I would reply that while a person may be a born administrator—keen, alert, forceful, able to get along with men at the same time that he is commanding and directing them—his natural ability should be reinforced with knowledge. While it is true that the manager does not have to be a technician, it is also true that he does have to have quite a detailed knowledge of a great many subjects. What manager is not confronted with questions of bond issues, budget problems, the problem of expressing his findings statistically, with problems of accounting, questions of health, sanitation, questions as to the powers and responsibilities of municipal corporations, of the relationship of the city to the state, of the rights of officers

etc? No mere administrative ability will enable the manager to settle such problems correctly without some actual knowledge.

But, it may be argued, the administrator gets all this knowledge not by way of formal education, but through experience. I can only reply that this idea was one of the chief troubles with city government under the commission form or the mayor form. I remember well hearing a finance commissioner from a certain city in Oklahoma say "The only way we city officials learn anything is by making mistakes, by getting our foot into it and then learning how to pull it out." This may be a good way for an elected official who does not claim to be anything but one of the people to learn. When one sets himself up, however, in a professional capacity, he cannot afford to learn by experimentation. He must know before he attempts to do. The city cannot any more afford to have a manager experiment with it in getting his education than can a person afford to have his doctor learn his profession through a series of experiments upon him.

But, it may be argued, it is possible to give such a course to a doctor or a lawyer or an accountant as will actually give him a basis for his profession. It is impossible to do so for one who is to be a manager. It is my opinion, however, that a course can be devised which will quite as well furnish the basis for the practice of managing as the regular professional course does for the practice of medicine, law or accounting.

What then should be the nature of such a course?

In the first place, no one should be advised to go into the field of public administration unless he has the personality, character and stamina necessary to make a success. The second requisite should be a good stiff high school course in language, mathematics and sciences as well as English. With such a course the student is in a fair position to begin serious college work. I believe that the first three years of college should be given over to a continuation of languages, mathematics, physics, chemistry, government, economics, history, etc. That is, a manager should train himself to be no mere technician but a broadly educated man. The senior year in college and one additional year at least should be given to the detailed study of subjects necessary to a thorough understanding of his future work. After having training in hard intellectual work, having the proper social, economic and political training and viewpoint, the student is now in a position to begin his intensive training for administration. The further formal training that a manager should have is, to my way of thinking about as follows:

Constitutional law

Law of officers
Contracts
Law of public utilities
Law of taxation
Governmental accounting
Governmental purchasing
The structure and organization of municipal government
The relation of the city to the state
Municipal home rule
Civil service and standardization
The assessment and collection of taxes
Debt policies and fund management
Budget making and administration
Management of municipal public works
Street cleaning and refuse disposal
Management of parks and playgrounds
Public Health administration
Police administration
Fire administration
Management of public utilities
Management of public education

In addition to this work the student should be required to do a certain amount of research work under adequate supervision. During the summer months for the last two years of his training he should serve as an assistant to a city manager or in some administrative capacity in city government. Reports upon this work shou'd be required by his instructors at the university. It is not claimed that even this training will enable a man to become a first class manager, for that takes experience. I think, however, that with this background, it would not be very many years until he was able to manage a small city pretty well. From there he could work up to larger cities.

If managership is made a profession filled with highly trained men and if city legislative bodies will select none but highly trained men, then, and then alone, in my opinion, will city government become a scientific business. If weak and inefficient men are given managerships it will not be long until the city manager plan of government will fall into ill repute.

It is my hope that within the next year we may be able through the cooperation of the University of Oklahoma and several experienced city managers to give such training as I have above outlined. It is possible at the present time in the University to take courses which would give most of this training. These courses should be

centralized, in my opinion, into a real manager's course, and a serious attempt should be made to persuade properly qualified students to undertake such training.

PRACTICAL BUDGET PROCEDURE

E. M. Fry, City Manager, McAlester

The subject which has been assigned to me, (Practical Budget Procedure) is one with which all those having charge of the affairs of cities must deal, at least once each year.

The word "budget" is derived from a Gaelic word, meaning sack, wallet, or bag, so that the city's budget literally means the city's pocketbook. The system as we now understand it was first introduced into this country in New York in 1871, and now practically all cities under the commission or managerial form of government have a budget prepared by the city management.

There has been so much written regarding budget procedure that there is very little left to be said that would not be a mere repetition. However, the remaining word in the title of the subject assigned me affords an opportunity to say a few words that I have been unable to find any record showing them to be an "oft told tale." That word "practical" has perhaps saved the situation so far as this paper is concerned.

The theory of the budget is evidently to form an estimate of the needs of the various departments of the city government, in order that the legislative authority may make proper provision for a certain period in the future. Generally, this is for the ensuing fiscal year. As a matter of fact, however, here in Oklahoma it is usually just the other way around, and the preparation of the budget really means ascertaining the amount of the anticipated income from all sources, and apportioning it to the various departments. This is, of course, especially true in most Oklahoma towns and cities, as they are comparatively young and are growing rapidly. There are so many things that really should be done in these fine young cities of ours that budget preparation is largely a matter of deciding which is the most important for the immediate future.

The manager's relation to the budget is very important indeed, as the legislative authority, or as we generally call it, the Excise Board, is mostly composed of very busy men, whose primary interest is in their own business. It is, therefore, necessary to make the budget as elastic as possible, insofar as the power to transfer from one subdivision of the department to another is concerned. Experience has shown us all that conditions arise which make it to the city's interest to make these transfers.

One of the most important functions of the budget, however, is to inform the people as to the way in which their officers,

or in other words their employees, propose to spend their money. This feature is taken care of in the usual legal requirement that the budget be advertised before it is considered by the legislative body, which in our case is the Excise Board. It appears, therefore, that practical budget procedure is that procedure which will be the most elastic and workable in case it is found necessary to revise, and will also furnish the necessary information to the public as to the proposed expenditure in all departments.

The details of the budget will, of course, vary considerably in different cities, as the larger the appropriation, naturally, the more detail will be required. It would seem, however, that in preparing a budget for the approval of the Excise Board a uniform system of general classification should be used. Each classification, or department, should not be divided into more than two subdivisions, such as salaries and general fund. This should be sufficient for appropriation purposes alone. A distribution ledger, however, should be kept, showing much greater detail, in order that an intelligent comparison as to costs of each subdivision of each department, could be made at any time.

The public takes an interest in the anticipated cost of each department of the city government, and also in the anticipated cost of the whole. It is also interested in the detailed anticipated cost of each subdivision. The people are more interested, however, in what each subdivision has actually cost during the past fiscal year, as past performances give them a clear idea of what they have received for their money. The fact that past expenditures and results were satisfactory goes far toward establishing confidence in the judgment of the city officers in the future.

Inasmuch as the budget is prepared at the end of the fiscal year, it seems that a detailed annual report should be prepared and published at the same time as an exhibit to the budget. This report to furnish the actual cost of all the principal items in all departments for the past year, as well as the estimated cost for the ensuing year, while the budget itself should show the general anticipated cost of each department.

ACCIDENTS—THEIR CAUSE AND PREVENTION

T. M. Green, Chairman of Safety First Committee of Oklahoma City Kiwanis Club

The cause of almost all accidents is carelessness and disregard of laws. Their prevention can only be brought about by arousing public sentiment against them.

During the recent Safety First Campaign of the Kiwanis Club which was conducted in Oklahoma City, a newspaper reporter asked me what percentage of accidents were unavoidable. I replied that I thought approximately 90 per cent of the accidents were due to carelessness and that the other 10 per cent were possibly unavoidable. This reporter asked me to give him one example of where an accident was unavoidable. The first thought that came to my mind was where a bridge had broken down under the weight of an automobile and the occupants were very seriously injured. He replied that if the bridge had been properly inspected that traffic would not have been allowed to go over it and that therefore this accident was due to carelessness on the part of the County officials on not having the bridge properly inspected. I then mentioned the possibility of an accident where the steering mechanism of an automobile should break and that the occupants should be thrown out and injured. To this he replied that if it had been properly inspected, that the accident never would have happened. And all on down through numbers of examples which I mentioned he almost invariably convinced me there are very few accidents which could not be avoided with proper care and if you will analyze the accident score very carefully, I believe that you will find that more than 99 per cent of accidents could be avoided with the exercise of proper care.

The Kiwanis Club has turned its attention more to the automobile hazard than to the hazard of industry. The hazard of industry is being admirably handled by the wonderful Safety organizations of the large companies, but these companies individually cannot handle the safety movement on the outside. The greatest hazard of all times is the modern automobile.

During the fourteen years since 1906, which practically covers the period of the safety movement in the industry, accidental deaths in industry have been reduced 28 per cent, while during the same period deaths from automobiles have jumped from 374 in 1906 to nearly 12,000 in 1920 an increase of 3000 per cent. Probably not more than one-third of the people in the

United States are in any way exposed to the hazards of industry, while practically every man, woman and child, the minute he walks out of his front door, is exposed to this new and giant hazard that goes speeding down our streets.

In the face of these stubborn facts, and the further fact that each morning every citizen reads in his daily paper the stories of deaths and injuries from automobiles in his own or neighboring community, why is it that public sentiment is so slow in accumulating such force that it will demand that the laws be enforced, and something drastic be done to stop this slaughter?

A partial explanation to this: One person in every twelve in the United States owns a motor vehicle of some kind and many of these owners are so-called "good citizens." Now a large number of these "good citizens" are daily violating the laws, and disregarding the simple rules of safety. They will not tolerate the enforcement of the law, much less will they demand that the laws be enforced. And it should also be said here that a large number of "good citizens" who are pedestrians are equally guilty of daily neglecting to observe the traffic rules, and are thus failing to co-operate in making it possible for the automobile driver to drive safely.

Where will we find a parallel condition, where a serious menace threatens the life of the people of every community, and yet a large number of the "good citizens" deliberately disregard the laws which are designed to eliminate the menace?

What is the solution of the automobile hazard which, with the addition of 2,000,000 automobiles yearly, is assuming such serious proportions?

There is only one solution: Develop public opinion to a point first, where the good citizens will tolerate law enforcement, and second, where they will demand law enforcement. This can be done only through an organized effort on the part of citizens of standing and influence in each community—an organized effort which will in a large way conduct such a continuous campaign of education through the schools, the press, the churches and other civic agencies that the interest of the people will be aroused and safety will come to be established in the minds of the people as good health has been. No tinkering around the edges, no little sporadic efforts will solve this problem. Nothing less than an effort big enough and strong enough to really grip the whole community, will ever reach the fundamental cause of the automobile hazard, and result in a substantial reduction of accidents.

In 1920 in the United States there were more than one-half as many people killed by automobiles as were killed in all the factories, mines and on the railroads put together. More than 600 people were killed in the Chicago Iroquois Theatre Fire and while this castrophe aroused the whole country and resulted in the transformation of practically every theatre in the United States, in 1920 there were 542 people killed in Chicago by automobiles alone and no big movement has been taken to stop this great destruction of life. The Triangle Shirt-waist factory fire in New York City burned 142 girls to death and this fire aroused such a protest from the people that drastic legislation covering fire protection of factories resulted in many states. Last year in New York City 746 people were killed by automobiles and nothing whatever has been done to stop it.

As no doubt many of you know, the Kiwanis Club has put on a Safety First Campaign for two successive years in Oklahoma City and the results are so gratifying that we plan to greatly increase the score for our spring campaign of 1922. I am going to give you some of the details of what the Kiwanis Club has done to arouse public sentiment in Oklahoma City.

In 1920 we erected at prominent corners throughout the city 50 semaphores or Safety First signs. In 1921 we added 50 more of these signs, taking down all of the old ones and setting them as well as the new ones in concrete so that they would not lean over. Small signs giving the exact number of accidents or deaths if any were placed on everyone of these semaphores in the city, accidents showing a range from 116 down to 2. At the edge of the pavement at eight of the main roads leading into the city large signs were erected warning citizens as well as strangers to watch for the Safety First Signs when in Oklahoma City because they indicated dangerous corners.

We started off our program this year with the parade. This parade consisted of Safety First floats of the various city clubs, Red Cross, City Patrol wagon, Ambulances, Hearses, bearing a sign, "BE CAREFUL OR YOU TAKE A RIDE WITH ME" and various other floats to call attention to the fact that you are constantly in danger from this modern hazard. In 1920 we made a few talks to the school children during the week and during 1921 we visited every school in the city and a talk on Safety First was made by some prominent speaker By talking to the children during this week we created in their minds a thought for Safety, which thought no doubt comes back to their minds every time they see one of the Kiwanis

Club Safety First Signs. We distributed to the children of the schools more than 15,000 Safety First buttons and some people still wear them though the campaign proper closed some six months ago. We consider the good which we can do in visiting schools and having prominent speakers at those schools is one of our greatest fields and we are planning to increase our activities very greatly next year.

The International Convention of Kiwanis Clubs met in Cleveland, Ohio, in June of this year and we were successful in having International Kiwanis adopt a resolution requesting all clubs throughout the United States and Canada to stage a Safety First week next spring and each spring thereafter, and we feel that when the more than 600 Kiwanis Clubs composed of over 60,000 members start a Safety First Campaign in each of their cities, that a big step has been taken towards an organization for the arousing of the public to this great menace. One of the greatest steps which has been taken by Oklahoma City towards eliminating the accidents evil has been the boulevard system inaugurated by the city commissioners in July of this year. Under this system certain streets are designated as boulevards and it is unlawful for any vehicle to enter or cross these streets without first coming to a full stop.

While this system has only been in in operation a few months this together with the work done by the Kiwanis Club has resulted in reducing the accidents in Oklahoma City from an average of more than 100 per week in 1920 to 33 per week in 1921 up to the present time this year. In 1920 more than 8000 accidents reports were made to the Police Department and up to last night only 3452 reports had been made to the Police Department for the year of 1921. During the first six months of 1921, six persons were killed by automobiles in Oklahoma City, but since July 15th when the stop system was inaugurated, not one person has been killed by automobiles.

Summing up the local situation, why is it that accidents have been reduced in Oklahoma City? The answer is simply that we have succeeded in arousing public sentiment in Oklahoma City to a point where it demands that automobile drivers observe the law.

A UNIFORM SYSTEM OF MUNICIPAL ACCOUNTING

R. T. Williams, City Clerk, Enid

The first important step of progress toward a uniform system of accounting for municipalities, began in the year 1901. when the city of Newton, Massachusetts, submitted its annual report in accordance with the uniform lines recommended for city records by the National Municipal League.

The following year the city of Baltimore fell into line, and two years later, Chicago, Ill., together with several of the more important cities in Massachusetts, and seventy cities in the state of Ohio, adopted as far as possible the same recommendations.

In the year 1904, New York, by state law placed the accounts of her cities on a uniform basis, and in the year 1906, the state of Massachusetts passed an act which required its municipal accounting officers to make their returns in accordance with, and upon a uniform schedule.

So necessary and essential was the matter considered by Herman A. Metz, when he was Comptroller of New York, that in the year 1909, he published a "Manual of Accounting and Business Procedure", and later established the Herman A. Metz Fund for the promotion of municipal accounting.

This fund provided for an information bureau to answer questions on all subjects pertaining to the proper keeping of city records and accounts.

Training schools have since been founded to offer instruction in the best methods of municipal accounting.

The movement toward uniformity may now be seen in a number of our states, and several thousand cities are adhering to a uniform system of accounting with splendid results, and a number of states have passed laws providing for the installation of proper municipal accounting systems, with a view toward uniformity, and which laws have received the hearty indorsement of such municipal organizations, as the National Municipal League; The League of American Municipalities; American Association of Public Accountants; The Government Accountants Association, and various other organizations.

This to my mind marks not only a steady advancement toward a more efficient municipal government but also a more efficient public, since such information will enable them to get some definite idea of how their money is being spent.

It has been said that the bookkeeping systems of cities belong to the cash book class, which only shows an account of

the revenues received and paid out, and may I venture the remark just here, that in the state of Oklahoma may be found cities of no small importance where a clear and concise statement in even a cash book, may be found of sufficient value upon which to base even the most meager financial statement.

This is not altogether the fault of the city officials, for too often, those charged with the duties of keeping the records of the city, are not sufficiently remunerated, so that they can afford to take the time, which would be necessary to keep a system of accounts.

Some one may say, that the business of our city is on a cash basis, and therefore we do not need anything more than a cash book showing cash receipts and payments, but when we remember that the collection of a city's revenue is generally from six months to a year, and even more, in arrears, it is evident that something more complete than a mere cash statement is needed to reflect financial conditions.

In the years gone by when municipal affairs were less complex, city funds were more easily administered, but with the ever increasing activities and the multiplying of the service of public officials, the accounting for the municipal funds has become more exacting and important, requiring more skill and business ability.

One of the most urgent necessities for more efficient accounting, is the fact that in the financial operations of the cities of Oklahoma, the use of funds can only be had for that for which it was appropriated, or for a specific purpose and none other. To illustrate—taxes are levied for general revenue purposes, and sinking fund purposes, and at the same time or at a later date during the fiscal year, bonds are voted for specific improvements, when it becomes absolutely necessary under the laws of the state, that all these different funds require a separate and distinct accounting.

To do this in such a manner as will enable the accounting officer to determine on a moments notice, such information as will be required from time to time, during the fiscal year by the different city officials and interested citizens, is the bounden duty of the City Clerk, or other accounting officer.

If the system of accounting in force is not such that will reveal these facts, something is wrong and needs immediate attention and correction.

It is not my purpose in this discussion to suggest forms for this, and forms for that, nor to suggest just what kind of book

should be used to attain the results, but to insist that every city in the state should have a uniform system of accounting, be the forms what they may, so long as they will show the facts and real conditions of the city's finances, and furnish information that should be in the hands of city officials charged with the administration of the affairs of the city, at least once each month.

I have often found that a report to the officials at the close of each month, has rendered a splendid service by way of information concerning the amount of money expended in the several departments during the month, and the balances on hand for use during the remainder of the fiscal year. This tends to put a check on expenditures and a help in making the necessary calculations, as how to use the balance of the appropriation to the best advantage and obtain the most results.

To obtain a uniform system of accounting for the cities of the state, I suggest that the constitution of Oklahoma, in so far as the same relates to the office of State Examiner and Inspector, be vitalized, and made applicable to all municipalities.

I do not mean by this that any audit of accounts cannot be made except by such as come through the office of the State Examiner and Inspector, but by placing upon this officer of the state such powers as will enable that official to prescribe the forms to be used by all cities just as is done for the County Clerk and the County Treasurer, of every county.

It so happened that I was in the office of County Clerk, when the forms prescribed by the office of State Examiner and Inspector, to be used by the County Clerks, were introduced, and I am happy to say that while the forms prescribed entailed a little more work than that which we had been using, they gave to us and to the public at large definite information as to what we were doing and the actual financial conditions of the county. There was as much difference in the system installed, and the one then in use, as there is in the system now used in an up to date City Clerk's office, and the cash book system, which has heretofore been mentioned.

The Oklahoma Municipal League could not perform a greater service, acting by and through its Legislative Committee, than to bring before the Legislature of this state this much needed legislation, and thereby place Oklahoma in line with the many other states, that have passed laws requiring a uniform system of accounting, and also bring the cities of our state up to the very highest point of efficiency, possible to obtain.

A great number of our cities now have their accounts

audited regularly, and the saving in time and expense of the auditors in searching for sufficient information upon which to base an intelligent report, would out-weigh many times the trifling cost of a few up to date records; also if a uniform system of accounting was in vogue, much time would be saved by Accountants, for then they would know exactly where to find the information most needed.

I would not criticize the Clerks of the different cities in the state for their methods, for any one knows their criticisms come thick and fast, and they are no doubt doing the best they can with the material at hand with which to do their work, but let us awake to a realization of the responsibility that rests upon us, to produce results and be able from our records to say to any one, when called upon for information relative to the affairs of the city, that we have it on hand. If our Commissioner of Finance, or the Finance Committee comes to us wanting to know how our revenues to be derived from ad valorem taxes are being collected; how much has been collected; the balance uncollected, back taxes uncollected; revenues to be derived from other sources than advalorem taxes, and the balance to be collected, let us be prepared to know and have it upon our records in such manner that we have only to turn our Tax Roll Account and give the information at once. Should we be called upon to know our liabilities, in bonds and coupons outstanding; warrants outstanding for the current and prior years, what a pleasure it is to us to have this information and ready to hand out to those entitled to know.

I am firmly convinced that a uniform system of accounting installed and kept up, will save the cities of the state thousands of dollars, and very greatly aid in getting all the revenues properly due the city from all sources, and in this manner tend to lessen the burden of taxation, of which we hear so much complaint at the present time.

Let me here repeat, that the Legislative Committee of the Oklahoma Municipal League could not perform a greater service than to bring this beneficial measure before the Legislature of our state with such force that it will be enacted as one of the fundamental laws for our cities, and I feel sure that in after years, their posterity will arise and call them "blessed."

Until such time arrives, let us as City Clerks of the state make every effort possible to improve our systems of accounting and give the very best we can, never losing sight of the fact that our methods are, to say the most, only very crude.

I have always found that our very accommodating and efficient State Examiner and Inspector, is ever ready and willing to assist us in every manner possible in any question that arises in our work, and to his office I personally owe more than I can re-pay for the very efficient advice I have received in installing the system in use in my office.

In conclusion permit me to say to every City Clerk, that we owe to our respective municipalities the very best that we have and should not be satisfied with "just any old thing," but use our every effort in improving our systems and endeavoring to keep peace with modern practices and methods, for upon our work depends in a very great measure the success or failure of every administration, in so far as the properly accounting for the revenues of the city is concerned. To promote efficient and economical municipal government; to promote the adoption of scientific methods of accounting and of reporting the details of municipal business, with a view to facilitating the work of public officials in securing constructive publicity to matters pertaining to municipal problems; to collect, to classify, to analyze, to correlate, to interpret and set forth such facts as will be beneficial to our officials and others directly interested in municipal government, should be our highest aim, and if we fail to do this we have not done all that is in our power to do, and unworthy to be called competent and efficient public officers.

PUTTING THROUGH A PUBLIC WORKS PROGRAM

George Hoefer, City Manager, Grandfield

A Public Works Program is the erection, organization and maintenance of Public Institutions, which, they may be in the highest degree advantageous to a great society, are, however, of such a nature, that the profit could never repay the expense to any individual or small group of individuals, and which it therefore cannot be expected that any individual or small group of individuals should erect, organize or maintain. The functioning and performance of these Governmental necessities and duties require too many very different degrees of expense in the different periods of society for any profit-seeking organization to undertake. It means an institution maintained and supported, which is for the general good and benefit of the whole society, but from which cannot be deducted or realized any monetary profit for the investing public.

Public Works in its true sense of the word should not be confused with Public Utilities in their true meaning. Public Utilities are institutions which can be made to yield directly to the investing public a momentary profit. Water systems are the most popular Public Utilities. A large percentage of the water systems throughout the country are owned and maintained by the Municipalities. The reason is that plenty of good pure water is the first essential for an enterprising town or city. If plenty of water is not available for your town or city, you may assure yourself its development and growth is about as far along as it ever will be. The next most popular Public Utility is the Electric Light & Power Plant. There are more privately owned Electric Light Plants throughout the country than there are privately owned Water Systems, but the towns and cities everywhere are realizing the fact that it is very convenient for Municipal ownership and control. Ice Plants, Transportation Facilities, etc., are in turn being either publicly owned or stringently controlled.

The history of the development of Public Works dated back to the beginning of time. The evolution of Public Works or the development of Public Works is as certain as the development and progress of civilization. The primary function of a Municipality, of course, is the exercise of the Police power in its narrowest sense; that is the enforcement of the laws to protect society against the crimally inclined of all types, high and low,—the bringing of order into the chaos of social activities. I

say this was the primary function of Public Works, bu with the growth of cities and the progress of enlightenment, the scope of the police power has broadened far beyond the limits of the term as understood in the old and narrow sense; and we are now creating special authorities charged with promotion of good order and public welfare through other than merely repressive measures. Just so long as men live in groups they will have collective wants, which can only be satisfied through state organization and supervision. The increasing complexity of modern civilization demands state action because the higher the state of civilization, the more completely do the actions of one member of the social body influence all the rest, and the less possible it is for anyone man to do a wrong without interfering more or less with the freedom of all his fellow citizens.

A highly developed government whether National, State or Municipal, recognizes Public Works as the true object for its organization and its prime duty. In truth the government must emancipate and promote as well as restrain because character is developed not through freedom alone, but quite as much through discipline and restraint, for we find that the most perfectly developed man is the social, not the natural man.

The development of public works is an interesting study, and one cannot get the true importance of Public Works by merely knowing the present day necessities. The study of History, Political Science, Economics, Sociology, Ethics, Philosophy and Religion contributes to the understanding and knowledge of why Public Works are necessary for the development of a good and efficient government.

The importance and the necessity of Public Works must be first understood before a program to put over any Public Works can be successfully accomplished. This is why I have briefly tried to outline the meaning of Public Works, their relation to Public Utilities, their history, development and their importance.

It is very important and certainly essential that the heads of the government who wish to give to the people the most service possible should understand the needs of such people and know the character and nature and circumstances of the citizens. The Mayor, Manager, Council or Commission of a town or city should be broad minded and possess sympathetic and altruistic feelings, and have the betterment of their whole community at heart. With this morale at the head of the government it is easy to put through a Public Work Program. No man is large enough to put over such a program alone. He

must possess the ability of organization and be able to handle his representative citizens along this line. This head of the government is continually looked to for leadership and is expected to take the initiative steps.

From the very nature of Public Works it is necessary that the entire community share proportionately the expense which can only be obtained through general taxes, however, it is often possible and many times advisable for the head of the government to cooperate with the altruistic and charitable institutions of the community in putting over Public Work Programs, rather than levy a direct tax for it. Public work carried on too extensively and paid out of the General Tax Fund will meet with more or less opposition and criticism in a community until some method is first used to bring its public to see the great importance and real necessity for the work, especially where the taxes are already seemingly exorbitant and apparently burdensome. I say some method educating the people to their needs as a whole must be instituted.

The Program should first be promoted through commercial, fraternal, charitable and religious organizations in which there has been more or less teaching in regard to the protection and betterment of humanity. There is hardly a public work that is put over which is not a particular ideal of some organization or of great interest to some professional man or group of men. Study your situation and obtain the cooperation of such particular institution or professional men and the work will be already started. Such Public Work could very reasonably be started within the town's or city's Chamber of Commerce or Civic Club because in these organizations you will be able to find the representative men and women of your community. This organization can well be called an inter-Fraternal, inter-Charitable, inter-Religious, inter-Professional and Business Organization, which will have for its membership men of every class and men of every varying idea. Here is where you can find some men or group of men who will agree with you on most any Public Work that you might endeavor to put over. Usually the majority of an organization of this kind realizes the truth that the government may be a better judge of the community's intellectual, moral, or physical needs than the individual himself, and that the government may rightfully protect him from desires, diseases and dangers against his wishes and compel him to educate his children and live a decent life.

I think the foremost among these Public Works is the public

health work which, in our enlightened cities has grown immensely during the last decade. They have control over the abatement of nuisances, the enforcement of the laws against adulterated foods, the inspection of milk, the collection of vital statistics and the suppression of infectious and contagious diseases. Advanced health officers now regard as within their work, every undertaking that has to do with prevention of disease, no matter whether lurking in the home, workshop or school. It is now recognized that public health is purchasable within natural limitations and that a community can determine its own death rate. To put over a Public Work of this nature, your first move would be to seek the cooperation of those men who understand the great importance of such a program,—men who have every day presented to them in their life work the conditions involved, such as your Medical Profession, Doctors of the different Degrees and the Social workers, etc. These are the only men who really have the opportunity to see this phase of life as it really exists. Start with these men as a nucleus to put over such a program.

As in health and sanitation work, so in the protection of life and property against fire. Fire prevention is coming to be recognized as a vital Municipal function and duty. The loss of property caused by fire each year is appalling. It is a public duty to eradicate fire hazards and create governmental departments that abate fire dangers and enforce ordinances and regulations to prevent waste. To put over a program of this kind you certainly should cooperate with men who know the condition and importance of such a program. No man knows more about these fire dangers than the Insurance man. He is furnished the best literature on the subject and he comes in touch with the actual dangers and hazards and terrible losses and truly understands the economic necessity for a program of prevention. These men should be organized by you to form the nucleus for the Fire Prevention Program.

Literary Clubs of your city, the Superintendent and the Principals and the public school instructors are probably the most interested in establishing good Libraries. This class of people knows the importance of such a Public Work because it is a part of their life work to educate and promote educational work of all kinds. Those are the co-workers for the Educational Public Work.

It took the American people a long time to learn and many of them have not yet learned that a well paved street is

a decided economy for the public using vehicles, as well as an improvement in the aesthetic appearance of a municipality. With this movement of better paved streets has gone a somewhat more halting movement for better methods and more thoroughness in cleaning them. Closely connected with the supervision of paving and cleaning the street is the problem of lighting them; but street lighting is more than a matter of public convenience or aesthetic appearance, it is a matter of public safety, being closely related to the prevention of crime. Putting over a Public Work of this kind is usually somewhat difficult to start, because it demands at the deginning considerable outlay of capital, and if your community is already over burdened with the high taxes it often meets with considerable opposition. More direct benefit can be derived from this class of Public Work than can often be realized from some of the other Works. The general pride of the town or city can be appealed to and an alinement with Good Street Associations and Automobile men would be assistance to promote such an improvement. These men come in touch with the conditions more than any other business man of the town or city and would naturally be more interested in seeing such a move put over than men of other capacities.

Speaking then from a City Manager's viewpoint, it is plainly to be seen that a man who attempts to make an efficient public official must necessarily be much more than a technical man, a man who knows good accounting, how to establish a drain, a sewerage system and know something of engineering. I am not in the least discounting those things when I say this, because any City Manager can employ men at the head of those departments, who have made a life study of those technical affairs, men who have trained themselves along those special lines much easier than he can obtain advice in regard to administration and promotion. Those qualifications are inherent. He must be an administrator and promotor and make his great study as to just what is beneficial and conclusive to the betterment of his community. He must be big enough to lead his people to see the importance of these Public Works and then finally be big enough to put them over.

THE VALUE OF PUBLIC HEALTH IN THE COMMUNITY

Miss Rosalind Mackay, Director of Public Health Nursing, Oklahoma City

The value of public health nursing in the community depends largely upon the organization back of it. If the Public Health Nurse is to fill the important place now assigned her in this general public health movement, every effort must be made to organize her work so that there will be as little friction in the administration as possible.

The day is past when it is necessary to apologize for this service. This form of activity is recognized as an important factor in the improvement of health conditions. Beginning as a philanthropy, primarily for the care of the sick poor in their homes, it has developed by leaps and bounds until today it is used by health officers in their health work, by organizations engaged in the prevention of diseases, and by industrial establishments in the care of the health of their employees.

The present trend is towards a national plan of creating Bureaus or Divisions of public health nursing in State Boards of Health, on an equal basis with other Bureaus, or to provide for State Supervising nurses under the Board of Health, the ultimate aim being to provide a sufficient number of nurses to do all branches of public health work on a standardized basis. The outstanding program being education and prevention.

The American Red Cross, which stands for the highest type of efficiency along nursing lines, has made a wonderful contribution to the cause of public health nursing. The Town and Country nursing service, which was carried on before the World War has developed into a bureau of public health nursing, with a definite policy as to standards of work and qualification of nurses. Public Health Nursing as a chapter activity may be financed by chapter funds until such time as the municipality or state is ready to take over the service. The Red Cross nas also contributed to a loan and scholarship fund, primarily to prepare nurses for public health service but also for the purpose of standardizing this service.

To illustrate what we mean by standards in nursing, let me repeat a story that appeared in the Public Health Nursing Journal:

"An anxious husband was trying, with awkward tenderness, to care for his sick wife. A knock at the dor brought a frown

to his face, as he interrupted his labors to answer it. Then the frown turned to a look of relief as he perceived the figure in blue uniform sanding on the doorstep.

"I am the Public Health Association you asked for a nurse to call to see Mrs. M——."

No question as to her welcome! The uniform and the magic words "Public Health Association" are sufficient, and gladly the husband sees his own clumsy efforts supplemented by the skillful fingers of this stranger, who is, on her first visit, received as a trusted friend. Such a change in such a little while! The sick woman, cheered and made comfortable, already seems to have set her feet on the road to recovery; and arrangements with a friendly neighbor enable the man to return to his work with lightened spirits, happy that "the nurse" will come again next day and confident in her ability to smooth out the way which, a little while before, had looked so impassably rough. Why this wonderful confidence in a stranger? Because the man knows that she represents something reliable—that her uniform and the source from which she comes are acknowledged throughout the neighborhood to stand for something god and strong and helpful. In fact, though not, perhaps, in words, he realizes that she represents something standardized."

In determining the best system of public health nursing for any community, the local conditions will always have to be taken into consideration. However, the benefits accruing to Public Health Nursing by being placed under the Board of Health are many, for the close co-operation which public health nursing has with municipal health problems such as tuberculosis, contagious diseases and infant welfare, is recognized by all. It makes for centralization and uniform control and an economic use of available material, assuming of course that the public health administration is divorced from politics as is the case in Oklahoma City.

There are no definite rules that can be laid down for any public health organization but there are certain principles that can be followed to advantage. The nurse employed must be a graduate of an accredited hospital and have had special training or its equivalent in experience. She must be a good general nurse, otherwise she will not be a good public health nurse. She must be a woman of settled standards of conduct. The qualifications that make her an efficient private duty or hospital nurse will make her an efficient public health nurse.

Public Health Nursing includes a number of varying activi-

ties, all definitely concerned with public health and social betterment. The work is largely prevention and education but it also includes bed side care of the sick in their homes. It is any form of social work in which the health of the public is concerned. The Public Health Nurse is responsible for the health condition of the community where she is employed. She may be a special tuberculosis nurse, an infant welfare nurse, an industrial nurse. The field is enlarging every day, it being generally accepted, however, that the general public health nurse, working in a limited district is the ideal form of public health nursing.

There are no limits to the duties of the general public health nurse. She begins with the expectant mother before the birth of her child, watches with her during this anxious period, instructs her in the proper care of herself, safe-guards her from accidents of pregnancy, arranges for care during her confinement, attends her during the lying-in period, gives nursing care to both mother and child, teaches the mother how to keep her well baby well, follows this child through pre-school age, watches for possible physical defects and provides for their remedy, and this is not all, she gives bedside care to the typhoid and pneumonia patients and where there are no special nurses in the field it is her duty to ferret out the hidden cases of tuberculosis for instruction and to give bedside care to the terminal cases.

The American Red Cross has given as the ultimate achievement of the Public Health Nurse in the community.

1st. That every sick person desiring the services of the nurse shall have it on a visit basis.

2nd. Pre-natal instruction and advice be given in every case.

3rd. Every new born baby be inspected and the mother instructed in its care.

4th. Every schol child be examined at least once a year and attempt made to have physical defects remedied.

5th. That all cases of tuberculosis be discovered and all terminal cases be given bed side care.

Previous to the organization of Public Health Nursing Service in Oklahoma City, there were four private agencies employing nurses for special work. While there was not a great deal of overlapping because of the close co-operation among the nurses, there was a good deal of waste motion because each nurse covered the entire city. After a conference of these agencies it was decided to co-ordinate their activities. A supervising nurse was employed, who was made responsible to the advisory com-

mittee, which was composed of the representatives of the organizations then employing Public Health Nurses. Each organization contributing to the expense of the nursing service. In July 1921 through the interest of Mr. Donnelly, Commissioner of Finances, who is a member of the Advisory Board, the City took over this service as a municipal function and retained the original advisory board. This board is in active touch through the supervising nurse with every phase of health work being undertaken by all agencies in the City. They meet regularly to discuss matters of mutual interest to each organization, hear the reports of the nurses and determine such policy for the improvement and enlargement of the work as may be found advisable.

We have at the present time twelve nurses, two are doing special school work, the others general work. The City has been divided into ten districts, the nurse assigned to a district is in charge of all the cases in the limited area. She is personally known to all the people in her district and she in turn knows all of her families, a situation which makes efficient supervision of health conditions practicable. The work includes pre-natal supervision, infant welfare, tuberculosis and contagious disease work, also bed side care to the needy sick in their homes.

We have standing orders governing the treatment of individual cases, standard dress uniforms, regulation bag with nurses equipment required for all nurses, standard records and reports that readily show the distribution of nurses time, character of the service rendered and results obtained.

Few of us realize that child bearing is at present a most dangerous occupation as far as life is concerned. More women of the child bearing age die in the United States from causes incident to child bearing than from any other cause, except tuberculosis. We lose one mother out of every one hundred and fifty in child birth. Pregnancy is not a disease, it is health under a strain. Only when every expectant mother has skilled supervision and attention during pregnancy, confinement and the lying-in period, will maternity be safe for woman. Three hundred babies die every year before they are twelve month old. One hundred and fiifty thousand of these die during the first month. These terrible totals of dead mothers and dead babies are made up of single lives, any one of which you could have dealt with at some time or other, if their lives began in your community. Your babies have probably lived to school age. The doctors examine them regularly. You know that they need

nourishing food, fresh air and the recreation which makes the body grow straight and strong, but this is not enough for each case of communicable disease in your city threatens the welfare of your children. Every case of typhoid or tuberculosis is a menace to your family. Our health depends not on how we live but also on how our neighbors live. The danger from sickness and disease that we do not see, is often greater than that we know of.

Health protection for every man, woman and child is not only our privilege but our duty. The medical profession alone cannot successfully cope with these problems. Public health nurses are neded in every village and rural community in our state.

Is your City, Town or County doing its part in the protection of its citizens. Dr. C. E. Winslow has estimated that there should be one general nurse for every five to ten thousand persons in the city or county and one school nurse to every one to three thousand children in a congested district If your community is not provided with such a nursing service, you may be sure that its citizens are suffering from illness that could be avoided and that its babies and grown persons are dying from preventable diseases.

Dr. Allen Krause, in his Classic "The Larger Field of Tuberculosis" has told us what we must do to lead men into the ways of health. He says:

"If I had my way and could so order it, I would call to me my best my most sympathetic students and I would say:—Here are the facts, go now out in the world and lay them before the people Go with only one idea and let this idea be the leading of men in the ways of health. Point out the things that man must do to achieve freedom from disease, and in this, let nothing prevent or deter you. You have only one responsibility and that is the achievement of better health for man, the holiest, the most unselfish and the most beloved cause that any human can enlist in."

Surely the pbulic health nurse's responsibility is as great as her opportunity for service.

UNIVERSITY OF OKLAHOMA BULLETIN

The University Bulletin has been established by the university. The reasons that have led to such a step are: first, to provide a means to set before the people of Oklahoma, from time to time, information about the work of the different departments of the university; and second, to provide a way for the publishing of reports, papers, theses, and such other matter as the university believes would be helpful to the cause of education in our state. The Bulletin will be sent post free to all who apply for it. The university desires especially to exchange with other schools and colleges for similar publications:

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